

# TRANSCRIPT March 7, 2006

### **MONTGOMERY COUNTY COUNCIL**

#### PRESENT

George Leventhal, President Marilyn J. Praisner, Vice President

Phil Andrews Howard Denis
Nancy Floreen Michael Knapp
Thomas Perez Steven A. Silverman

Michael Subin



- Council President Leventhal, 1
- Okay, ladies and gentleman let's begin; we have Chaplain Edco Bailey here. Let me just 2
- say that as we -- Chaplain Bailey, please come forward -- but as we reflect and listen to 3
- Chaplain Bailey's words of prayer, lets us recall our very good friend former 4
- Councilmember Rose Kramer who has been a source of great advice and mentorship, I 5
- think, to all of us. Very well known to me, just a very kind, caring person who passed 6
- away on March 3rd. And Ms. Praisner would like to speak about former Councilwoman 7
- 8 Rose Kramer.

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- Councilmember Praisner.
- Well, before she was a Councilwoman she was a legendary school board member and 11
- was responsible for bringing Montgomery County very much along on civil rights and 12
- equal educational opportunity for all children in this County. She's been a friend for me 13
- and a mentor since my first campaign in 1980, School Board, County Council, School 14
- Board, County Council, and I will miss her dearly. She's an incredible legend for 15
- Montgomery County. Thank you George. 16

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- 18 Council President Leventhal,
- 19 Thank you. Chaplain Bailey, please.

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- 21 Chaplain Edco Bailey,
- Good morning. Shall we bow in a moment of prayer, please? Oh, gracious and eternal 22
- 23 God, we give you thanks for the privilege of living and serving in this County. We give
- you thanks for all who have served before us. We give you thanks for those who have 24
- lived here until now. And this day, oh Lord, our God, we bow in prayer. All across this 25
- County your people need and await your grace. Good governance blesses us all. It is 26
- 27 your graceful gift unto us. We pray for it today. We thank you for it today. Grant that as
- we work in Council, our thoughts, feelings, actions, and decisions all accord with your 28
- will. May the necessary business of governing well for the good of all of your people be 29
- advanced here today. In every work and deed, a public service throughout this County, 30
- 31 may your will be done. Thank you, oh Lord, our God, for the beauty, tranquility, and
- prosperity of Montgomery County in this good state and nation. Amen. 32

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- Council President Leventhal. 34
- Amen. Thank you, Chaplain, we appreciate your joining us this morning. General 35
- business, do we have agenda or calendar changes, Ms. Lauer? 36

- Linda Lauer. 38
- We do have an addition to the Consent Calendar. Agenda Item "L," which is 39
- appointment of special Council to provide legal advice regarding the federal copyright 40
- law that's Adel, Shapiro, and Finen, LLC. Also, just to mention on "F," where we're 41
- confirming the appointments to the Agricultural Advisory Committee, we inadvertently 42
- left off the name of Lawrence Zeller, and so he is supposed to be on the list and he is in 43
- the resolution. And also this, today's the day for announcing the public hearing on the 44



operating budgets. They'll be held on April 5th, 6th, 17th, and 18th at 7:00 p.m. And April 5th at 1:30 in the afternoon as well. Thank you.

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- 4 Council President Leventhal,
- 5 Thank you very much. And I'm sorry, Mr. Silverman was raising some urgent Council
- 6 business. Did we deal with petitions?

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- 8 Linda Lauer.
- 9 We do have some petitions this morning. We have a petition supporting full funding of
- the library's budget, petition from parents of Walter Johnson High School students
- supporting the modernization of the school, petition from the Friends of Little Falls
- Library supporting full funding of the library's budget and a petition supporting the
- renovation of Gaithersburg Library.

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- 15 Council President Leventhal,
- 16 Thank you very much.

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- 18 Linda Lauer,
- 19 And there are some minutes.

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- 21 Council President Leventhal,
- 22 And minutes, we have minutes for approval?

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- 24 Council Clerk,
- We have the minutes of January 30th, February, 13, 14 and 16 for approval.

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- 27 Council President Leventhal,
- 28 Is there a motion to approve the minutes.

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- 30 Councilmember Floreen,
- 31 So moved.

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- 33 Councilmember Praisner,
- 34 Second.

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- 36 Council President Leventhal,
- Ms. Floreen has moved and Ms. Praisner has seconded approval of the minutes. Those
- in approval will signify by raising their hands. It is unanimous among those present.
- We'll move to the Consent Calendar. I'm going to comment on item "C" on the Consent
- Calendar. First of all, I noticed that there are a number of Laytonsville neighbors here,
- and we've already pretty much made it clear what our intent is with respect to the
- proposal from Derwood Bible Church. I just wanted to comment, these votes give me no
- pleasure to vote against churches and we want to preserve the Ag Reserve. And I am,
- of course, going to vote for the Consent Calendar including the resolution that I already
- voted for in the T&E Committee. Mr. Knapp and I have had a number of conversations

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- and although it's going to be June before we meet with the Planning Board to do the
- 2 Planning Board's biannual review, Mr. Knapp is taking the lead, but I'm working with him
- on a request that the Planning Board do a comprehensive inventory, as best we can, of
- 4 religious institutions in the County. Now, recently I offered legislation that is pending
- 5 now before this body to establish special days of commemoration where County
- 6 employees would be notified of festivals, some religious holidays, days that are
- important to demographic groups in our County but may not be well-known to all
- 8 residents of our County. And the Asian Lunar New Year is among them and we've been
- 9 asked by that community to provide special recognition for that day and many other
- days of importance to Christians, Jews, Muslims, Hindu and others. And in the course of
- that the question was in the consideration of that bill, the question was raised of the
- 12 County Attorney whether, in fact, it was constitutional for us to pass along a law that
- creates days of commemoration noting religious holidays. And the County Attorney said
- absolutely it is constitutional that we are not establishing religion, and we're not favoring
- one religion over another. And so with that as a basis, and we'll have further
- conversation with the County Attorney about this, I am comfortable that it is not
- unconstitutional -- that's a double negative -- but that it is constitutional for the Planning
- Board to address this concern which has been raised consistently by religious
- institutions that as we plan, we are not considering the need of our residents to pray.
- 20 We talk about the -- we set aside space for our residents to go to school as we should,
- 21 to use a park as we should, to drive on the roads as we should, even to shop, but we do
- 22 not make allowance for the fact that our residents need to pray. And so my hope is,
- working closely with Mr. Knapp, that this will be an issue that we can ask the Planning
- Board to take a comprehensive look at with significant input from all affected
- communities, certainly including the faith communities. It's been a pleasure working with
- Mr. Knapp on this, and we'll be composing this request to the Planning Board over the
- 27 next several weeks. Mr. Andrews.

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- 29 Councilmember Andrews,
- 30 I was going to move approval of the Consent Calendar.

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- 32 Councilmember Knapp,
- 33 Second.

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- 35 Council President Leventhal,
- Mr. Andrews has moved, and Mr. Knapp has seconded approval of the Consent
- Calendar, it is before us now. Mr. Knapp, did you have comments?

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- 39 Councilmember Knapp,
- I do have a couple comments. Thank you, Mr. President. I appreciate your remarks as it
- relates to our efforts to reach out to our religious community, our communities of faith.
- This has been a long few months as it relates to our preservation of the Ag Reserve, but
- I think it started a good dialogue not only about increased awareness of the Agriculture
- Reserve throughout the entire County but also to look at the issues that our faith
- community is wrestling with. And so I appreciate the Council President's efforts to work

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with me, to try and get -- have that discussion. And I don't think anyone knows what the 1 answer is, but I think it's a good dialogue for us to have, and to really come forward with 2 that community and to figure out what solutions we can put on the table, and I think the 3 full Council, from our conversations, is committed to doing that. So I appreciate 4 everyone's efforts, and I appreciate the efforts and the leadership of the Laytonsville 5 community to come forward, not just with -- it's easy for us sometimes to find things we 6 don't like. But I think it's been a challenge to come up with real constructive ways to help 7 move that debate forward. And I think that you've done a great job in trying to identify 8 not just a position but solutions and alternatives. And I appreciate your efforts over the 9 course of the last few months to try to do that. On Item 3-I, Ms. Floreen and I have 10 introduced a resolution to support increased funding for Metro. I just wanted to take a 11 few seconds to update my colleagues on some of the efforts going on throughout the 12 region. Once I get done with that, I'll make a motion to waive the rules and see if we can 13 actually pass this today as well. As I think many of you know and are supportive of, 14 there has been a lot of call over the last few years to provide a dedicated source of 15 funding for Metro, being the largest transit in the system in the country without a 16 dedicated source of funding. And this past fall Congressman Davis introduced federal 17 legislation that would at least authorize a billion and a half dollars over the next 10 years 18 for the Metro system if the compact jurisdictions could actually match that. So you have 19 about \$3 billion over the next 10 years dedicated to funding, or an increase of about 20 21 \$300 million a year. Interestingly, even though it is difficult sometimes to work on in a regional fashion, all of the jurisdictions, Virginia, District of Columbia, and Maryland, 22 23 have introduced legislation to address in their own jurisdictions' ways increased funding for transit. In the state of Virginia they're seeking the ability to increase their sales tax 24 locally because the local jurisdictions provide funding for Metro and they're seeking that. 25 There's been a lot of going back and forth during their current legislative session, but 26 27 there is still language included in the Senate's budget amendments so that it'll go to at least budget reconciliation so there's hope there will be funding coming out of Virginia. 28 The District of Columbia has also added legislation that will dedicate a portion of their 29 30 sales tax to funding, to Metro funding, and there are at least three bills introduced in the state legislature in Annapolis, one by the House Ways and Means Committee, Delegate 31 Hickson, one by our Montgomery County Chair, Delegate Barkley, another by District 14 32 Delegate Kaiser that'll raise various amounts of funding for transit, not just for Metro, but 33 for transit statewide, and the resolution that we have introduced today is to really just 34 reaffirm this Council's commitment in support of Metro funding which is our basic 35 infrastructure, our transportation infrastructure. I mean, we talk a lot about 36 transportation, but as this transit system continues to age, without adequate investment, 37 all of what we're trying to do for transportation is built on a shakier foundation. And so all 38 we're asking today is to reaffirm this Council's commitment so that our delegates in 39 Annapolis can speak to their colleagues and say we need to be looking to increase, not 40 just funding for transit, funding for transportation more broadly, but since that doesn't 41 appear to be going anyway because it is in fact an election year, and we don't want to 42 talk about revenue measures this year, at least not in Annapolis. To at least take a start 43 and keep on the table the ability to increase funds for transit and take that step forward 44



at the very least. So I would beg my colleagues indulgence to waive the rules today to not only introduce, but to also to pass this resolution.

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- Council President Leventhal,
- 5 It's the motion is made by Mr. Knapp and seconded by Ms. Floreen to waive the rules
- and move to immediate passage of Item I on the Consent Calendar. Why don't we vote
- on that first. Ms. Floreen did you want to comment on that, Item I? I believe we need
- two separate votes, we need to vote to waive the rules before passing the entire
- 9 Consent Calendar. So the motion now before the Council is to waive the rules and allow
- immediate passage of the resolution introduced today by members Knapp and Floreen
- to support increased funding for Metro, Ms. Floreen.

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- Councilmember Floreen,
- 14 Thank you Mr. President, I wanted to second everything that Mr. Knapp has said and
- just to reiterate the point that in this election year we hear a lot of talk across the state
- about other needs, but very little about transportation. And insofar as we all are aware
- that this is a huge element of our basic infrastructure, and that transit support is just as
- important as anything else, I think it's incumbent upon us to really keep the drum beat
- rolling on this subject, to encourage our delegation and the legislators across the state
- to keep in mind this is part of our fundamental responsibility as lawmakers to provide
- basic services and that's right up there -- along with libraries -- and all the other needs
- 22 that we have. But again, unlike some of the other issues, there is not as constant a
- presence in terms of legislature as there should be on some of these basic needs and
- the point of this is to keep this issue alive and moving along.

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- 26 Council President Leventhal,
- 27 Ms. Praisner.

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- 29 Councilmember Praisner,
- On this issue, I was not going to comment so I'll...

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- 32 Councilmember Knapp,
- 33 Mr. President I just have one more thing to add. In addition to the three delegates I
- mentioned, that Senator Kramer from District 14 has also introduced a companion
- legislation to what Chairman Hickson has had in the house, just to make sure that all of
- our folks get due recognition for their leadership on this issue, thanks...

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- 38 Council President Leventhal,
- Okay, so those in favor of waiving the rules and when we pass the Consent Calendar
- 40 immediately adopting the resolution introduced today by Councilmembers Knapp and
- Floreen, will signify by raising their hands. It is unanimous among those present. We're
- now back on the Consent Calendar, Ms. Praisner.

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44 Councilmember Praisner,

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Yes, I wanted to make note of the fact that the Council is submitting to the County 1 Executive a Council recommendation for a candidate to serve on the Board of 2 Investment Trustees, Mr. Bernard has served for two terms and can not serve an 3 additional term. So the candidates are recommending Mr. Gillespie as our candidate as 4 I recall, and I want to thank him for his willingness to serve. And also thank the other 5 candidates with whom we met. The Management and Fiscal Policy Committee again 6 was impressed by the caliber of the individuals who continue in Montgomery County to 7 come forward to volunteer to serve their community. I had two other items that I wanted 8 to comment on, and those are the resolution request from the school system for 9 relocatable classroom funds. I think it would be helpful if we had for the public hearing a 10 chart, that laid out each of the fiscal years since '01 when we've been asking for -- when 11 we've been approving early so that they can get the jumpstart on ordering and having 12 relocatable classrooms available during the summer and get them ready for the 13 September year. But what I'm interested in, is for each of these years since fiscal year 14 '01 that we've taken action, how many of the relocatables were proposed to be for class 15 size reductions or new educational initiatives or the all-day kindergarten program and 16 how many were for enrollment impacts? As you look at the PDFs I think it's important, 17 folks continue to comment about the number of relocatables they see around this 18 County, and I think they're really not aware of how many of them are associated with 19 educational initiatives, like all-day kindergarten, and like class size reductions, rather 20 21 than enrollment projection missteps, so to speak. With that in mind though, since we are also looking at a significant dollar amount associated with relocatable classrooms, I'd 22 23 like to have a better understanding of where we've been with enrollment projections at the time when we're doing this relocatable classroom appropriation and what the actual 24 enrollment turns out to be at the end in September 30, because I believe our enrollment 25 is stabilizing. So the question is, in the long run are we going to be spending more 26 27 money for relocatable classrooms for educational programming, or are we going to spending them for enrollment. Whatever it might be, I would like to see those numbers. 28 And finally there is a request for a Linkages to Learning program at the new Arcola, well 29 it's not new, but at the reopened Arcola Elementary School. My question is I'd like to 30 31 see a list of the elementary schools that are and were planned for Linkages to Learning programs and see where this Arcola project would fall in this continuum and is it still our 32 understanding that we'd be eligible for state reimbursement for the Linkages to Learning 33 facility piece of construction as well. Thank you. 34

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Council President Leventhal,

Mr. Subin?

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Councilmember Subin,

While we're looking at how closely we've come in on enrollment data, I'd like to see comparisons of enrollment projections from the late '80s and early '90s and see comparisons of where they are coming in today as with then. I'd like also to see Councilmember votes in terms of all-day kindergarten and smaller class size and what that effect on the need for portables has been.



- 1 Council President Leventhal,
- 2 Mr. Silverman.

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- Councilmember Silverman,
- 5 Thank you, Mr. President. I realize this is introduction but as long as we're throwing our
- 6 two cents worth into the mix of things...this is actually a sort of a request to the
- 7 Education Committee. This is a request to the Education Committee for its discussion
- 8 this spring on the issue of relocatable classrooms. I'm sure I'm not the only
- 9 Councilmember who's getting information about mold and about older portables. And so
- 10 I'm just going to ask the Education Committee if when they review the budget that they
- take a look and see whether the budget requests from the school system is, in fact,
- enough for relocatable classrooms, given what the time delay is in getting these things
- up and running. And I assume the Ed Committee has looked at this in the past, but I
- would just respectfully ask the Ed Committee to take a look at it in the context of this
- budget as to whether we have sufficient number of, I guess, new relocatable
- classrooms for those that there are challenges with from a health and safety standpoint.
- 17 Thank you.

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- Councilmember Subin,
- The answer that we will certainly take a look at the numbers, but the answer to that is
- 21 probably there are not. There's not enough money, especially looking at the CIP. The
- 22 CIP is as large as it is because there are permanent classrooms requested in there to
- do away with the need for the portables and those old portables that are way past their
- useful life. So again, we'll look at the numbers. There is not enough money in that CIP
- to replace those that are needed, and there's probably even less sufficient money if the
- 26 CIP does not include all the requested new classrooms.

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- 28 Council President Leventhal.
- Okay. That concludes the discussion on the Consent Calendar. Those in favor of
- adopting the Consent Calendar will signify by raising their hands. And that is unanimous
- among those present. That takes us to the District Council Session. We have Hearing
- 32 Examiner's report on application number G-836 for an amendment to the zoning
- ordinance map. Mrs. Carrier?

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- 35 Francoise Carrier,
- 36 **Yes.**

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- 38 Council President Leventhal,
- What is the decision before the District Counsel.

- 41 Françoise Carrier,
- We have, this is case number G-836. You have recommendations of approval from the
- Planning Board and its technical staff. I recommended that the case be remanded
- because I identified a number of deficiencies in the development plan. I normally shy
- away from recommending remand, I prefer to give an up or down based on what the



- applicant has presented, but in this case I felt that the application had a great deal of
- merit and with some changes might be something that would meet with the Council's
- 3 later approval, so that's why I recommended a remand. There's one -- two other things I
- 4 want to point out. One is that the applicant has submitted a letter to the Council
- 5 requesting a remand in light of the recommendations in my report. The other is a typo
- that I found in my report when I was reviewing it. Let's see, I think it's page 82. I can't
- figure out the Circle page at the moment. It has to do with the buffering between the
- 8 Moose Lodge, which is the property immediately east of the subject property, and the
- 9 duplex units that would be close to that property line. In the report it's on Circle 108, I
- said there would be buffered by a wooded area 60 to 70 feet deep, and that was wrong.
- I fixed it in the resolution where it says the actual number which is 30 to 35 feet deep.
- The distance from the duplex units to the Moose Lodge building is between 60 and 70
- feet, but the wooded portion on the subject property is more like 30 or 35 feet. And if
- there are any questions, of course, I'm happy to answer them.

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- 16 Council President Leventhal,
- 17 Questions. Mrs. Praisner?

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- 19 Councilmember Praisner,
- Yes. First of all, I'd want to be clear, your comments are that changes were made in the
- 21 development plan after the Planning Board acted?

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- Francoise Carrier,
- Yes, and that's not uncommon. They were because I raised it during the hearing, my
- office's interpretation of the status of the development plan which that it's binding unless
- you say it's illustrative, and that led the applicant to look more closely at the
- 27 representations they were making on the development plan to figure out which ones
- they really were committed to, and which ones they needed to say were illustrative. In
- 29 the process of doing that, they made changes after the hearing and I think they made
- them in a way that just created too much flexibility so that the District Council can't really
- assess what the development would look like. Now those changes might have affected
- the Planning Board's view on Master Plan compliance. There's no reason to expect that
- would change the Planning Board's view on compatibility. So there I'm just departing
- from the view the technical staff and the Planning Board took.

- Councilmember Praisner.
- I had a couple of other questions. The Issue of the State Highway's Traffic Study
- Requirements that went further than was done, I am not sure that I fully understand the,
- 39 I think, the Planning Board in your comments. It would seem to me based on
- 40 conversations that we've had about the Annual Growth Policy, even in its current state,
- 41 that when we're looking at intersections, I can see significant legitimacy with going to
- Georgia Avenue on the west and to Layhill Road on the east, especially given the
- preference for looking at intersections with traffic lights. There are only -- there's only
- 44 that one additional traffic light at Connecticut Avenue between this property and Georgia



Avenue on the west, and there's the one at the shopping center and then you get to Layhill Road.

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- 4 Francoise Carrier,
- 5 There is actually a traffic light right at the corner where this property is located.

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- 7 Councilmember Praisner,
- 8 No, I understand that but if you count from that property, beyond that traffic light at that
- 9 intersection, it's only two traffic lights to the west and two to the east. So I really think
- that the study area does need to go as state highway suggested, to both Layhill and to
- Georgia Avenue. And I was not sure I understood the rationale for not doing so.

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- 13 Francoise Carrier,
- 14 It's based on the local area transportation review requirements the Planning Board has established.

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- 17 Councilmember Praisner,
- Well, but the -- I understand the Planning Board had them established, but we've had
- discussions with Planning Board. So my questions I guess are more with the Planning
- 20 Board for having -- and we've had this debate about how you count intersections. So I'll
- just say that from my perspective I found that very troubling. I also found troubling the
- 22 discussion about the quantity of homes close to together on Homecrest, given
- 23 Homecrest and the narrowness of that have road and the fact that the massing just
- contribute to that view. But all of these things could be looked at again when it's
- remanded. And a remand does allow the Council to reject a plan that comes forward.

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- 27 Francoise Carrier,
- 28 Of course.

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- 30 Councilmember Praisner,
- If it feels that it is not consistent. Correct?

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- 33 Françoise Carrier.
- 34 Certainly. The Council will be free to deny approval or to recommend, or to approve it.

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- 36 Councilmember Praisner.
- Okay. The other issue was the, besides the Homecrest was the issue of the placement
- of the additional units, and there was a lot of discussion, I think, and concern from the
- Moose Lodge about the proximity of those to them and how you're creating a problem in
- 40 the future. So I didn't know, I didn't understand your interactions on those issues.

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- 42 Françoise Carrier,
- I was very troubled by that during the hearing because I thought it was an issue that had
- received insufficient attention. It appeared to me from the responses that we got from
- 45 the applicants and their witnesses, that they had not really -- they had not thought

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carefully about the relationship between those units and the Moose Lodge. They had considered the Moose Lodge, I think, they had not thought of it as a very active or noisy kind of place, and then there was testimony that says we have big outdoor parties here. I felt that they had made -- they had increased the distance and then they had provided what I considered to be a crucial improvement which is a wooded buffer. 30 feet of trees from the evidence I've taken in many cases can actually be very effective sound barrier. So I was persuaded that that was adequate. You know, if the Council feels otherwise, certainly I would be more than happy to get input and guidance at this point if the Council does remand the case. This is a unique opportunity for myself and the applicant to get guidance from the Council on what might or might not be acceptable for a plan that comes back to the Council in the future. 

Councilmember Praisner,

Well, let me just say, I've tried to look at developments not just when they're being built but how they're going to be from a livability perspective, because the folks who live there have to live with whatever decisions are made. So I hope that issue will be looked at. And I also hope that the -- I like the idea of the internal roads and the fact that the whole rationale for the Master Plan calling for the development inside -- calling for this to have a better development and to have that road options, a network of road options especially should [INAUDIBLE] be developed, and it helps the other units that already exist. So, but I am concerned about the massing kind of issue on Homecrest and that is a narrow road. So, I saw a couple of other typos on page 2, the word "proposed" on the second line is I think propose, and there was one other place where I think Mr. Lopes' first name is referred to Rock as opposed to Rocky. So I think I can find this before the end of this discussion, but I will move to remand.

Councilmember Knapp,

Second.

Council President Leventhal,

Ms. Praisner moved, and Mr. Knapp seconded the motion to remand, Ms. Floreen.

Councilmember Floreen.

Thank you, Ms. Carrier, I thought your proposal to remand here was very interesting, and I'm not opposed to it. But I wanted to understand from you exactly what it is that you think is necessary for us to make the decision here. Really, and what we did last week with changing the standards for Planning Board findings and the like with respect to site plan conformity and consistency with development plans and the like is all setting a new paradigm more or less, I think, for how we make decisions and how the Planning Board makes decisions and how projects come through. So I wanted -- I think it's important that it be clear to us and hear from you as to what are the sorts of things that you think will allow you to be in a position to make recommendations up or down and for us to make decisions up or down. We've had some of these conversations in the abstract, and we did last week really, in the Committee and when we worked through the legislation, but now we have it in the specific. And so I'm looking sort of Circle 9 onward



- where you talk about what's on the development plan and what's a binding element and
- what's not. And I wanted to hear from you what it is that you think we need to have
- that's locked in stone, and what not. For example, Binding Element Number One says
- 4 number of units will not exceed 39. So is that good enough from your perspective?

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- 6 Françoise Carrier,
- 7 I think that that's perfectly fine. My concern was that there is this textual Binding
- 8 Element and there on the same piece of paper there's something called "General
- 9 Notes" which has exact numbers: 21 single family detached, 12 duplex, six townhouses,
- it doesn't say up to 21 single family, up to 12 duplex, up to six townhouses, and I found
- 11 that inconsistent.

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- 13 Councilmember Floreen,
- Well, would you rather that we -- well, the question is then if there were 22 single family
- detached, would that be a problem from your perspective? I mean, if it were to come
- through the site plan approval process with a somewhat different mix.

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- 18 Francoise Carrier,
- 19 Right, I think is a different mix is...

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- 21 Councilmember Floreen,
- 22 And I'm a little concerned that we, you know, we could say the number of units shall be
- 23 39. And Planning Board, you're going to have to figure out how that works.

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- 25 Francoise Carrier,
- Well, you know, that's the way...

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- 28 Councilmember Floreen.
- 29 Because those were the tests that were applied in the transportation kind of analysis, I
- 30 assume.

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- 32 Françoise Carrier,
- And that was the way it was originally written, it was really at my suggestion that they
- said it would not exceed 39 because I could envision scenarios where there might be
- grading issues or, you know, some other issues of a level of detail that we can't identify
- now, that the Planning Board...

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- 38 Councilmember Floreen,
- Yes, but, right, but you're asking them for detail, but -- and us for less detail in terms of
- 40 approval?

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- 42 Françoise Carrier,
- 43 My impression of the development, of this stage of the approval process is that the
- 44 Council will inevitably have less detail in front of it than the Planning Board will at site
- plan. And I am in favor of seeing language like "Units will not exceed 39" in order to

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- allow the Planning Board to, for instance, require that they take off a unit. If the Planning
- 2 Board feels that that's necessary in order to meet other goals, which may be -- they may
- 3 be environmental goals or compatibility goals and, you know, my sense is that the
- 4 Planning Board is entitled to some discretion in the exact layout that is approved at site
- 5 plan.

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- 7 Councilmember Floreen,
- 8 Yeah.

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- 10 Francoise Carrier.
- And so putting in "up to 39 units" is an effort to give the Planning Board some room to
- work with, while at the same time letting the Council know that the Council is approving
- something that could have as many as 39 units. If it has fewer units, logically the
- impacts on the neighborhood would be lesser or the same. So the Council's
- compatibility determination would not be undermined if it drops down to 38 units or 37
- units at site plan. Allowing to the number of units to increase at site plan presents
- different questions, because then you do have a compatibility issue, potentially.

18

- 19 Councilmember Floreen,
- Well, It's all, of course, from the perspective of the beholder on that. But in order to be
- clear, would you, will you be advancing the position that, for example, the number of
- units will not exceed 39. That's okay with you. What you would say is for the types of
- units that are shown -- apparently you're looking for some real -- something in between
- in terms of nailing it down but allowing some flex.

25

- 26 Françoise Carrier.
- 27 What I expected to see under the general notes was "no more than 21 single family
- detached, no more than 12 duplex units, and no more than six townhouses."

29

- 30 Councilmember Floreen,
- But do you mean that? I mean, there might be a better arrangement. So you could say -
- 32 I mean, so would you say -- that's the kind of thing I'm trying to understand that you're
- 33 saying.

34

- 35 Françoise Carrier,
- Well, you raise a good question. If the applicant made an argument, that they would
- prefer to say "there will be 39 units and the mix may change," I guess I would have to
- hear what their argument was as to whether that allows the Council to make its
- decision, because you can't have dramatic changes from the development plan to the
- site plan would undermine the Council's authority.

41

- 42 Councilmember Floreen,
- But that's the question. I doubt very seriously, and I suppose you can go down the line
- and say "Well, how important is it to each one of us and that this mix be exactly this
- way?" and I bet you'd get nine different answers. But I do raise the question, for

13



- example, then you have, also have a -- issue. I mean, I absolutely agree with you about 1 the dedication issue. That needs to be resolved up or down, it shouldn't be academic. I
- think you have some issues in here about, like, setback stuff. Don't you? I doubt very 3
- seriously that I personally care about the landscaping plan but maybe we do, I don't
- 4 know.

5

6 7

- Françoise Carrier,
- 8 I don't think there's anything specific to setback.

9

- 10 Councilmember Floreen.
- I think it's important... You know, I'm not sure that I feel all that strongly here about the 11
- difference between a worship space between 6,000 square feet and 6,500 square feet. 12
- But If it said, for example, somewhere between 5500 and 7,000, would we care? 13

14

- Francoise Carrier. 15
- No, I completely agree with you. I don't care what number that is. I just think it should be 16
- the same number in the all the places. Just as a matter of simple consistency and 17
- accuracy they should pick a number and use that number every place where they're 18
- going to refer to the size of the building. 19

20

- Councilmember Floreen, 21
- Well, I think this is a learning experience, what we're going through now. But I do think 22
- 23 it's incumbent upon the Council to expect it of itself as much as, I think, it's expecting of
- the Planning Board and the applicants to be clear about what's important and to be 24
- clear about what we will allow to be illustrative in these sorts of things. And I wanted to 25
- understand then, you're proposing that it be remanded, why...exactly? Apart from the 26
- 27 right-of-way thing.

28 29

- Francoise Carrier,
- 30 I would start on page -- Circle 7, were identified what I think -- find to be the three
- biggest flaws. There are some -- some of the things that I identified starting on yours 31
- Circle 9, if it hadn't been for the bigger problems on Circle 7, I might have used another 32
- approach which we have used sometimes in the past which is to recommend approval 33
- provided that the following minor changes are made before they bring the development 34
- plan in for the Hearing Examiner's certification, if there are changes that would be 35
- consistent with the evidence. That's something that I think was just a mistake. Then I 36
- could do that. But in this case there were fundamental problems that I felt were... 37

38

- Councilmember Floreen, 39
- On Circle 7 you're saying you don't like the fact that it says that lot sizes and shapes 40
- and locations are illustrative. 41

42

- Francoise Carrier. 43
- Right, what I would prefer to see, and it really is only a matter of a couple of words 44
- difference, is that "Lot sizes and shapes and building locations are approximate. Exact 45

14



- locations may be revised at subsequent preliminary and site plan proceedings." And to
- 2 me that would make a difference from a legal standpoint because the way it's written
- now, the buildings could be anywhere on the site plan. And I'm not saying that the
- 4 current applicants has any intention of bringing a site plan that's totally different. But you
- 5 know, things change.

6

- 7 Councilmember Floreen,
- 8 But if they put approximate that would make you happy?

9

- 10 Françoise Carrier,
- 11 Right.

12

- 13 Councilmember Floreen,
- Okay, that's helpful. Green area...

15

- 16 Francoise Carrier,
- Green area and I think this was, I think from what I saw in the hearing that this was
- unintentional, they don't have any intent to actually reduce the greenspace down to
- 19 30%. I think it was a cautionary maneuver on their part. You know, dropping down from
- 20 46% percent greenspace to 30 would require some very significant changes. I think that
- 21 probably there's some number between 46 and 30 that is more realistic of what they
- 22 actually expect this to look like. And if they were to say this was going -- that the green
- 23 area might reduce to, I don't know, 40% of the site. I'm just -- I'm picking a number, I'm
- 24 not trying to prescribe it.

25

- 26 Councilmember Floreen.
- I think everyone would say to you that it's going to be approximate.

28

- 29 Francoise Carrier,
- 30 Absolutely.

31

- 32 Councilmember Floreen,
- But -- so would you say that green area would be, if they said between 30 and 46, is
- that okay?

35

- 36 Françoise Carrier,
- I don't think so, because the difference is so dramatic between 30 and 46. In order to, if
- they were to have only 30% greenspace, they'd have to be doing something very
- 39 dramatic to the site plan.

40

- 41 Councilmember Floreen,
- That's the standard of the zone.

43

44 Francoise Carrier,



- It is a standard of the zone and if they want to say that it's 30%, that's fine, the Council
- can evaluate it at 30%. But I think that it's not appropriate for the Council to evaluate a
- development plan that visually shows 46%, if what's going to end up at site plan would
- 4 be 30%. On this particular site with the significant environmental constraints they have,
- 5 in order to decrease the greenspace that much they would have to be taking out units,
- taking out roads, you know, or they'd have to be encroaching on the stream valley
- <sup>7</sup> buffer. It would have to be something big.

8

- 9 Councilmember Floreen,
- Again, I'm trying to understand what it is that you're saying.

11

- 12 Francoise Carrier,
- 13 If they were to say greenspace would be between 42 and 46% of the site, that's a
- modest enough difference that I think it's consistent with the development plan they
- were proposing.

16

- 17 Councilmember Floreen,
- What if they said 35 to 45.

19

- 20 Francoise Carrier,
- They would to show me what 35 looks like.

22

- 23 Councilmember Floreen,
- Well, you're not doing the site plan though. You're identifying what we can approve at
- the governmental level, knowing that they're going to be a lot of decisions about
- roadways, for example, or parking or, you know, community concerns that may change
- that number.

28

- 29 Francoise Carrier,
- 30 Sure.

31

- 32 Councilmember Floreen,
- And if our object, for example, there's some MPDUs in here, I assume.

34

- 35 Francoise Carrier,
- 36 Six, yes.

37

- 38 Councilmember Floreen,
- We wanted to make sure that those MPDUs get produced, they're going to have to land
- on the ground somehow. And there is this eternal tension. Well, this is a point where I
- 41 think we need to be clear, and as to what satisfies our regulatory obligations.

42

- 43 Françoise Carrier,
- It may be that the applicant would be able to describe what the development plan would
- look like with whatever minimum level of greenspace that they're proposing. Say they

16



want to have a range of 35 to 46% greenspace, if they can describe in some way how it would look, how it would change with 35%, that might be enough for the Council to make an assessment of whether that's a development that would be compatible with the surroundings. I just have no information on what this would look like with anything less than the 46% that's shown on the development plan.

6 7

Councilmember Floreen,

- 8 Okay, and then your issue is that there will be a point of access in Bel Pre and no more
- 9 than two on Homecrest. Well, it seems to me that's a pretty good approximation of
- maybe -- there's going to be at least one in Bel Pre and maybe two, maybe one on
- Homecrest depending upon how things go. That's how I read it. What's wrong with that?
- 12 What is it that you think that you need to have? That seems to me -- you know, it's one
- or two, that's pretty close.

14

- 15 Francoise Carrier,
- In a typical case I probably wouldn't care. In this case the Master Plan specifically called
- for one of those two access points on Homecrest Road. One of the central
- recommendations of the Master Plan for this area was that there be a road on this
- particular property along the northern boundary, and that's Road C, that's one of the two
- 20 Homecrest Road entrances.

21

- 22 Councilmember Floreen,
- 23 So, you're saying there needs to say between one or two?

24

- 25 Françoise Carrier,
- Well, what I'm saying is...

27

- 28 Councilmember Floreen.
- 29 Is that what you're saying?

30

- 31 Françoise Carrier,
- One of the foundations for finding Master Plan compatibility here, Master Plan
- consistency, is that -- is an actual commitment to building that northern road, or at least
- providing the right-of-way for it. There's no commitment to that on this development
- plan. If they were to say "at a minimum, Road C," which is the road that provides for
- Master Plan consistency "will be provided." They can get rid of Road A, which is the
- second entrance on Homecrest Road. That's not as practical for them from a
- construction standpoint, because it's clear that road A is a better entrance for this
- 39 development.

- 41 Councilmember Floreen,
- I'm just trying to understand what you're saying and what is important because I think
- it's important for us to know that and I think it's important for the community to know that
- and I think it's important for the applicant world to know this sort of thing. So you're
- saying that this would satisfy your concern if it said, there shall be at least one and



maybe more access -- and maybe an additional access on Homecrest, that would be okay?

3

- 4 Francoise Carrier,
- They need to commit to making the one road that the Master Plan called for, or they can say...

7

- 8 Councilmember Floreen,
- 9 Are you going to require all Master Plan road commitments?

10

- 11 Francoise Carrier,
- 12 ...or they can say...

13

- 14 Councilmember Floreen,
- 15 She said, hopefully.

16

- 17 Francoise Carrier,
- No, here's two, you know, there's two alternatives. They can say, "We're not committing
- to building that Master Plan road" and then the Council can make a decision how
- important that road is. And if the road is really important and this applicant is not
- committed to it, the Council can deny. They need to be clear whether they're going to
- build that road or not and this doesn't make it clear.

23 24

- Councilmember Floreen,
- Okay so, all right, and those are the key kinds of points for this one. I do think it's
- important that if -- when we're in cases like this that take some time to put together that
- we be working on some advice to folks as to the kinds of things that need to be shown
- as binding. So that, you know, we won't have remand situations for -- just for cleanup
- sorts of things, that's all that really it is. It sounds to me that that's all that's involved
- 30 here. Obviously, there's a couple other things. Are there other things in this category
- that need to be shown as binding as opposed to nonbinding?

- Francoise Carrier,
- The other -- I identified on Circle 9 several specific things, one of which we already
- discussed, which is the number of units and the size of the Vedanta Center. These are
- all relatively minor and I think inadvertent errors which can be fixed. The dedication
- issue. The most difficult thing, I think, for the applicant in this case is going to be -- two
- difficult things. One is going to be how they address that road recommended by the
- Master Plan. It is a little tricky, because the site distance is tough, and it's possible that
- 40 DPW&T will just say you can't build a road there. I think they're going to need to do
- some creative thinking about how they're going to make sure they provide -- at least
- 42 they provide the land for that road in a way that's flexible enough that maybe the County
- can find a way to work with the Racquetball Club to combine those two entrances or
- something in order to achieve the Master Plan goals. So they need to leave some
- 45 flexibility for that. The other difficult thing for them, I think, is going to be dealing with the



concerns I raised about compatibility along Homecrest Road and the density of the housing. They squished all the units in there because of the environmental constraints on the site and it's a constant tension.

4

- 5 Councilmember Floreen,
- 6 That's actually not what you're identifying as deficiencies.

7

- 8 Françoise Carrier.
- It is one of the -- it's not identified on those pages because it's not a technical deficiency with the development plan. It is identified elsewhere in the report where I make my conclusions about compatibility.

12 13

- Councilmember Floreen,
- 14 You can agree or not agree based on what they're showing you but you have to
- appreciate if there are -- the focus is on what's binding, I think. I think it needs to be your
- focus, it needs to be our focus, it needs to be the Planning Board's focus, it needs to be
- the community's focus. Pretty pictures are irrelevant, it's what's binding that matters. So
- that is the challenge for everybody engaged in this process. So, if you're looking at
- amassing that's not binding, it's just academic.

20

- 21 Francoise Carrier.
- Well, and it is the applicant's representation of what they're seeking. And in my view...

23

- 24 Councilmember Floreen,
- 25 At the moment.

26

- 27 Françoise Carrier,
- 28 My view is that they -- I mean they can't seek any more than that, if it says up to 39
- units. My view is that the Council, in making a compatibility assessment, has to take the
- most dense development that could be built under this development plan. They have to
- consider the worst-case scenario from the perspective of the surrounding land uses and
- that worst case I think is what's shown now which is the 39 units and the configuration
- that's shown, which presents a high density on the side facing Homecrest Road.

- 35 Councilmember Floreen,
- Well, I think it's important again, as I said from our perspective, from the legal
- perspective, from everybody's perspective, what's binding is the only thing that's going
- to control these things. So, my comment is, I think everybody needs to be clear about
- that because the Planning Board is never shy about addressing those issues. And I
- 40 think the decision from this side of the table, as well as the advice from your side of the
- table has got to be the focus on those points. I am tired of looking at development plans
- that have lots of language in them but that are quite irrelevant to what might actually be
- produced. And I think that a lot of that is okay because, frankly, it doesn't matter -- what
- 44 the key points are are community impact and the fact that we already have a site plan



review process. And the site plan stuff goes on in a different room, with different players, for different objectives.

3

- Francoise Carrier,
- 5 I guess there's one other point I should probably clarify on my view of a development
- 6 plan and that's that I distinguish between a development plan and a schematic
- development plan in one very central way. A schematic development plan is only
- 8 binding to the extent that it says it is, only the parts that they say are binding elements.
- 9 The rest of is it just a pretty picture, as you say. A development plan is the inverse, it's
- all binding unless they say its illustrative. The reason I'm so concerned about having the
- word "exact building locations are for illustration" is to emphasize that when they show
- 20 houses -- or I know it's not 20 -- 11 houses in a row on Homecrest Road, they're
- saying there will be 11 houses, we may move them over a few feet here and there, but I
- think that picture is binding. It is not just an illustration.

15

- 16 Councilmember Floreen.
- 17 That's fine, that's absolutely fine. It just needs to be clear what is binding and what's not.
- So I wanted to have this exchange with you.

19

- 20 Françoise Carrier.
- 21 I think it's a valuable one.

22

- 23 Councilmember Floreen,
- To make it clear what we're going to be focusing on, what you'll be focusing on, and
- what the applicant and community can know is relevant and is not. So I think this has
- been a challenge in the past and hopefully we can clarify the range of issues left on the
- table so that when the Planning Board gets it we won't have community concerns that,
- "Oh, we never saw this before," that's part of the problem. Or "Well, we know we saw something, but it wasn't this and we were told," that kind of thing. So the clarity of the
- information from the get-go needs to be addressed and this is kind of our first case on
- the subject. So thanks very much.

32

- 33 Françoise Carrier,
- My pleasure.

35

- 36 Council President Leventhal.
- Okay, the matter before the Council -- we have Ms. Praisner wants to comment. We're
- debating the motion to remand.

- 40 Councilmember Praisner,
- Right, I agree with much of what Ms. Floreen said but I would, having had some
- interactions with either departments or the Planning Board on these issues, and I agree
- it's a learning experience, but I would hate to have a site plan then go after the Council's
- action with the houses massed the way they are on Homecrest and then be told or have
- someone say to the Planning Board, "Well, the Council saw them and approved the



- rezoning and therefore, there is not a issue of compatibility with the neighborhood
- because of the Council's rezoning affirms that it's okay." So, I think we're an in a
- learning experience as far as how we deal with the Planning Board site plan review, but
- 4 I'm also concerned about misrepresentation or assumptions about what the Council's
- 5 action is. So I think it's clear or has to be clear that while there are elements that are
- 6 binding, the issue of what the issue Council saw, and whether the Council approved the
- 7 rezoning means it affirms and supports 11 units located in a certain way, if that is not
- what we are saying, it needs to be very clear about that as well. So it's not just what's
- 9 binding but what is not and also, I guess from my issue, the question is there's not a
- presumption that you automatically get a rezoning. And so the guestion is the
- compatibility and the implementation of the Master Plan. Thank you.

12 13

- Council President Leventhal,
- Okay, the matter before the Council is the motion to remand the local map amendment.
- 15 Those in favor of the motion to remand will signify by raising their hands. It is
- unanimous among those present. Thank you, Ms. Carrier. We now have before us
- 17 Agenda Item number 5 Application Number G-820 for an amendment to the zoning
- ordinance map regarding Normandy Farms. Normandy Farms is seeking to be rezoned
- to the Country Inn zone. Ms. Carrier.

20

- 21 Councilmember Floreen,
- Move approval.

23

- 24 Councilmember Praisner,
- 25 Second.

26

- 27 Francoise Carrier,
- There you go.

29

- 30 Council President Leventhal,
- Ms. Floreen has moved, and Ms. Praisner has seconded approval of the reclassification
- from the RE-2 TDR zone to the Country Inn zone of 6.5 acres of land located at 10701
- Falls Road in Potomac, Maryland. Is there discussion? Mrs. Praisner.

34

- 35 Councilmember Praisner,
- I don't want to take time today. But I do think at some point we should have an
- interesting conversation with the staff at the Planning Board about whether -- what is a
- legal nonconforming use or not and the difference of interpretations as noted in the
- footnote on Circle 3.

40

- 41 Council President Leventhal,
- Okay. Those in favor of the reclassification will signify by raising their hands. It is
- unanimous among those present. That concludes the District Council session. We're
- now in session, are we the Council or are we the Board of Health? We're the County
- 45 Council, I guess.

21

Council Clerk,

45



1 2 Council Clerk, Mr. Leventhal, we should have done a roll call. 3 4 5 Council President Leventhal, We need a roll call vote on the reclassification? Thank you very much. The clerk will call 6 the roll. 7 8 Council Clerk, 9 Mr. Denis? 10 11 Councilmember Denis, 12 Yes. 13 14 Council Clerk, 15 Ms. Floreen? 16 17 Councilmember Floreen, 18 Yes. 19 20 21 Council Clerk, Mr. Subin? 22 23 Councilmember Subin, 24 Yes. 25 26 27 Council Clerk, Mr. Silverman? 28 29 30 Councilmember Silverman, 31 Yes. 32 Council Clerk, 33 Mr. Knapp? 34 35 Councilmember Knapp, 36 Yes. 37 38 Council Clerk, 39 Mr. Andrews? 40 41 Councilmember Andrews, 42 Yes. 43 44

22



1 Ms. Praisner?

2

- 3 Councilmember Praisner,
- 4 Yes.

5

- 6 Council Clerk,
- 7 Mr. Leventhal?

8

- 9 Council President Leventhal,
- 10 Yes. It is unanimous, thank you very much, unanimous among those present. So we --
- are we the Council or are we the Board of Health, Steve?

12

- 13 Steve Farber,
- 14 Yes, we're listed as the Council.

15

- 16 Council President Leventhal.
- We're back in session as the County Council and we have a status report on next steps
- regarding flu pandemic and avian flu.

19

- 20 Councilmember Knapp,
- 21 Mr. President, I just had one quick thing.

22

- 23 Council President Leventhal,
- 24 Mr. Knapp.

25

- 26 Councilmember Knapp,
- I have to leave sometime within the next half an hour and will miss, must miss the
- 28 afternoon session so I want everyone to know that and I will get all the hearing
- testimony and follow up with, I'll be down in Annapolis.

30

- 31 Council President Leventhal,
- We understand that you'll be testifying in support of transit funding and we appreciate
- your taking the time to do that, Mr. Knapp. I'm very optimistic that this next Agenda Item
- will be finished before noon.

35

- 36 Councilmember Floreen,
- 37 Mr. Leventhal, add me in that category...

38

- 39 Council President Leventhal,
- 40 Ms. Floreen. The Chair of the Transportation Committee will also be testifying in
- 41 Annapolis in support of Metro this afternoon.

42

- 43 Councilmember Silverman,
- 44 Can I go? Can I go?



- 1 Council President Leventhal,
- The question is are they carpooling?

3 4

- Councilmember Floreen,
- 5 Yes.

6

- 7 Council President Leventhal,
- 8 Okay. Dr. Tillman. The microphone is yours.

9

- 10 Dr. Ulder Tillman.
- Good morning. It's my understanding that you wanted to have a follow-up session on
- pandemic influenza planning and Gordon Aoyagi is here as well. You had some specific
- questions regarding what Homeland Security is doing as well as with Public Health, and
- so you do have a lengthy packet that details what our preparedness is and what we
- have been doing. And before we get into the details of that I do want to alert you that
- the federal government has been progressively adding to their website, the
- www.pandemicflu.gov website so that they now have about seven different check lists
- for different sectors of a jurisdiction, so that in addition to federal, state and local, they
- have added something for the individual and the community. Now they have a checklist
- 20 for schools in terms of their readiness and how to look at that. They have a business
- section and a faith based organization and communities organization section and has
- 22 the Secretary Levitt, is going about to the different states with his summits. They seem
- to be adding components to that website as they go along. So that's just for background
- 24 information.

25

- 26 Council President Leventhal.
- So is Mr. Aoyagi going to make the presentation?

28

- 29 Dr. Ulder Tillman,
- 30 Yes.

31

- 32 Council President Leventhal,
- Okay, let's just hit the highlights, Gordon, we have your memo here in the packet.

- 35 Gordon Aoyagi,
- Absolutely, Mr. Chairman. Thank you very much members of Council for an opportunity
- to brief you on the highlights of our pandemic flu planning. Just in response to the first
- question of how does the Executive view the pandemic flu? I think like all of us, much as
- we sat and looked at Y2K we knew that something was out there and the question there
- was how do we prudently and in a measured way assess the vulnerability and then take whatever actions we deem appropriate to respond to that. Pandemic flu is like many of
- the other emergencies that we might face in the future. We look at it as being probable.
- If we listen to some of the experts, they might say it's imminent. Our feeling there is a lot
- has changed since 1918, but it is prudent for us to prepare and plan for pandemic flu in
- 45 the same manner that we would plan for a bioterrorist incident that could release a



pathogen to our population that would be contagious as well. So there are some things 1 that we have been doing for quite some time in preparation for contagious diseases and 2 pathogens that would spread throughout the population. In terms of -- we have 3 summarized many of the things that we have done and as I mentioned before, the 4 current medical technologies are very advanced. At the national level they're looking at 5 trying to increase capacity for vaccine production which, we think will provide significant 6 relief. But on the other hand as we look forward as in all major emergencies we may 7 find that we have to address a lot of the issues by ourselves, and in fact, that's what a 8 lot of our planning is directed towards and pandemic flu in particular, we may find 9 ourselves saving much like we do with the common flu, it being a virus, the home 10 remedy might be the most appropriate method of care during this thing in order for us to 11 properly respond as well as to try to minimize the exposure of the population. And we'll 12 talk about some of our containment strategies as we look at some of the other 13 responses to the other questions. The second question asked, what resources and 14 activities have we done in preparation for the flu and what initiatives might you see in 15 07? Starting on page 3, we have tried to highlight many of the things that we've already 16 put in place. We're very fortunate to have Syndromic Surveillance in Montgomery 17 County. We did that shortly after 9/11, that will serve us well. We summarized a lot of 18 the activities starting on Circle 4 in terms of things we have done. Most notably there is 19 our hospitals have put together a Memorandum of Understanding to deal with surge 20 21 capacity. That agreement has included a discussion in MOU with NIH, and Bethesda Navy to rely upon their capacity to give Montgomery County a uniquely positioned 22 23 resource that will serve us as well as the region so we're very fortunate there in terms of that. We're working very hard to increase the number of volunteers to assist us and 24 we've undertaken a number of exercises as well. I call your attention to the last item 25 which -- on page Circle 4 is we acknowledge that one of the unique features of 26 27 pandemic flu may be isolation and guarantee that our Public Health Department be active in issuing those orders. We've put together a work group with the judiciary that 28 includes the state attorney, the County Attorney, the public defender, the ACLU to talk 29 30 about the process of such things in the event that we have to respond. Our primary 31 focus there is make sure that our law enforcement personnel and the judiciary appreciate the issues that are involved with the issue of guarantine orders, particularly 32 in a pandemic. We've also developed, as you can see there on page 5, the capacity to 33 investigate outbreaks, and that's the MCORT response team, as well as provide 34 biopacks to our 4,000 first responders. I should mention the biopack service in a 35 bioterrorist attack if the pathogen is bacteria based. If it's viral based, the biopack that 36 we have distributed is doxycilin, and it'll not be effective against a virus but at least 37 we've engaged the first responders in terms what have actions they could take in the 38 event of a bioterrorist event; how they can protect themselves and their families. We 39 have also done some stockpiling as well. Listed on the bottom of page 5 are some 40 pending issues that we're in the process of addressing. You probably will not see a 41 significant number of initiatives in the FY '07 operating budget specifically addressed to 42 pandemic flu because we're looking at some infusion of some federal funds both 43 through the Health and Human Services Department as they begin to allocate funds to 44 states and localities as well as we hope to be able to attract some urban area security 45



money as well as some state and local government Homeland Security money as well. 1 Our plan is to try to leverage federal resources for initiatives to respond to pandemic flu. 2 How much preparation -- the third question is how much preparation has already been 3 included in our overall emergency preparedness planning? We've listed a number of 4 things that are already in place. You can see there, and this Council has acted on many 5 of the grants that we've asked for, including patient tracking, increasing the number of 6 volunteers, et cetera. In terms of -- just jumping on down to -- we do want to highlight 7 one item and that's on the bottom of page --Circle 7, and that's to say in any large 8 emergency, we do expect fear will run more rampantly than science and knowledge is 9 available. And in this case it's very important that local governments display the 10 appropriate leadership to ensure that there's a concise, accurate information distributed 11 to the public and that we all speak with one voice. And so I wanted to underscore that 12 and that's the basic tenet, of course, of emergency management. On question four you 13 asked how are we measuring progress? What we've attempted to do to respond to that 14 question is to take a look at some basic capabilities. These capabilities are somewhat 15 general in nature when we initially developed them. The federal government has 16 recently issued some what we call "34 target capabilities" and some of these 17 capabilities that I mentioned here are reflected in what we have here as well. What I've 18 attempted to do is identify what the capability measure is and the action on the right-19 hand side of the status of our progress towards that area. Suffice it to say, I think our 20 21 progress has been good. Are we as well-prepared as we could be? I think to measure that in terms of time and many of our colleagues across the country, we're probably as 22 23 good or perhaps as better, slightly better than some of the others, but there is a whole bunch more to be done. As you can see there, we've put into place command 24 structures, we've worked hard on communications, we've developed good strong 25 information sharing with the capability involving our Syndromic Surveillance. 26 27 Communications interoperability: while not complete, we're fortunate in the region that we all have voice communications and we're working very hard with some U.S. 28 initiatives to provide more information. Mutual aid: very robust. Council will soon see 29 30 some agreements to standardize mutual aid across the region as well as through the 31 state. Resource management: we're working on it. We're tying to prepare that. Risk communication: good strong communication internally, we hope, as well as externally 32 throughout the region. Transitional phases of an incident: information sharing in place, 33 our Syndromic Surveillance will be expanded regionally. Emergency response: very 34 strong capability of fire and police. Public health is working on mutual aid in terms of 35 their support. We've developed a pretty strong reserve medical corps. We continue to 36 talk to large -- some of our biotechnology firms who have doctors and nurses as part of 37 their employment, and we're talking to them about using them as deployable teams to 38 assist us, as well. So we're fortunate to have some good public partners there. 39 Investigative capability: in terms of specifically being able to respond to pandemics or 40 bioterrorism events, we've send both fire -- I mean police and Public Health to 41 epidemiological forensics training. And that's important that if something happens that 42 we can trace the nature of the disease and if it's a crime to preserve the appropriate 43 evidence. And both fire and public health -- I mean, both police and public health have 44 been working hard in developing that. Mass casualty capability: obviously some of the 45



UASI grants that have been approved that will soon be -- come before this Council, we 1 are working very hard at increasing the amount of people that he we can handle. And of 2 course that relates to surge. Fatalities: how they're identified, how they're managed and 3 how they're buried. Folks, we will be resource constrained there. We would typically rely 4 upon DMORT, a federal team, to come in and assist us, but in this regard we may be 5 having to work and find our own resources because that resource may be, in fact, 6 impacted. Recovery: obviously some issues in place. The last question was question 5, 7 which had to do with first responder preparations, how would they respond? To our first 8 responders, the management of infectious disease is not new. They've been degree 9 with tuberculosis, they've been dealing with AIDS, they've been dealing with a whole 10 host of other infectious diseases as they respond to various incidents in the public. Has 11 it been as widespread as they would encounter with pandemics? No, but because of 12 bioterrorism each of our fire and police personnel do have a little kit that they're 13 supposed to carry with themselves, which consists of masks, gloves, and eyeglasses to 14 be able to use. The sustainability of maintaining that stockpile over a prolonged period 15 of epidemic will be what will challenge us and we will have to make sure that we have 16 the procurements in place to be able to sustain long-term activity there. Communication 17 with the public: Alert Montgomery, a whole host of other public forums that we're trying 18 to host. Business continuity: we do plan tonight working closely with the chamber and 19 we've already initiated discussions with our department heads and many of the large 20 21 corporations and Homeland Security have already sat down and discussed business continuity plans. Hospital surge: very pleased to announce that we worked very closely 22 23 with the Montgomery County Collaborative. We developed a joint application to HRSA to do operational research of the key businesses processes that are associated with an 24 emergency room for hospital surge. Just last week it was announced that [MCCL], the 25 Montgomery County Collaborative received that grant, so we're excited to be able to 26 27 move forward with in partnership with MCCL with regard to hospital surge. Mr. Chair and other members of the Committee, I know that that was very brief and hopefully 28 summarized the status of our activity. We did provide you a great deal of reading in 29 30 response to the questions that you provided. But I hope you share with us the 31 confidence that we have that we are taking measured and prudent steps, and we're looking at pandemic flu in the same context of other emergencies, and we are 32 developing the appropriate plans to respond if needed. Thank you. 33

3435

- Council President Leventhal,
- Thank you, there's nothing better than contemplating mass death just before lunch. Mr. Andrews.

38

- 39 Councilmember Andrews,
- Thank you. Gordon, on Circle 19, it indicates that the County, in a presumably an
- emergency like a pandemic, would require that all public service employees be
- considered essential and may be required to work in positions other than normal duties.
- Certainly makes sense to me. Is all the authority in place for that currently?

44 45

Gordon Aoyagi,

27



- Yes and no. We don't have specific language like some of the states, California, as I recall, and another state have actually adopted legislation which mandates all public
- 3 service employees are considered essential during an emergency. We have done is
- 4 we've talked to the unions involved and conveyed the importance of it. We're currently
- 5 in the process of meeting with the Office of Human Resources to see how we
- 6 operationalize this language and then there's a significant amount of training that will
- have to occur. But we have begun engaging we think the right parties, the unions and
- 8 OHR, to see if we can ensure that that language supports our need to have employees
  - move wherever we need them in an emergency.

9 10 11

- Councilmember Andrews,
- So I understand you're doing that based on what you said. But that leaves some doubt
- in my mind as to whether the County Executive could under a declaration of an
- emergency compel employees at this point to serve in that -- who are not currently
- designated as essential.

16 17

- Gordon Aoyagi,
- There are two parts to that. One is is there operative language? And there is, we think,
- under "other duties as assigned" in the exercise of management rights. And clearly
- that's there. The other thing is even if you issue an order in a pandemic, will people
- comply even at the risk of losing their jobs? So obviously our appeal during this process
- is the ethic and the values that we would place on public service, in hopes that we can
- 23 get as many people to come forward as possible. My sense is that if you were to order,
- you know, that people will do what they feel that they have to do, first for their families
- 25 and then for the public. And we hope that we can do much to help them address the
- issue of family care so that they are available to us.

27 28

- Councilmember Andrews.
- 29 Right. Okay. There's a strong repeated emphasis on home preparedness, home
- treatment, self-protection throughout the responses, which I certainly think is important
- as well. And there are a couple mentions -- several mentions that the County expects a
- shortage of vaccine. And that would certainly increase the importance of people
- protecting themselves and reducing the chance that other people will receive or get sick
- from them. On a separate issue, there's a -- on Circle 7 it says, let she read it so I don't
- get it wrong. "In a public health emergency orders may close schools, shopping malls,
- get it wrong. The public fleatin emergency orders may close schools, shopping mails,
- churches, assemblages of three or more people." And I understand that as well. I think
- a real challenge is how you address public transit and I haven't heard much about that.
- Clearly public transit is critical for many people to get around. We've done a lot to
- promote public transit, encourage it, many people rely on it -- thousands of people rely
- on public transit. But what are the public health strategies for minimizing the chance of
- transmission of viruses in a pandemic on buses and trains? One of the articles indicates
- that sneezing and coughing can propel viruses 10 to 12 feet. So what kind of strategies
- do you think would be important for reducing the transmission in public transit?

44 45

Gordon Aoyagi,



- The reason that we offered that first item is that's what they had to do in 1918, was to
- take some pretty severe actions. I think that this is one of those items that will be a good
- public policy debate for the Board of Health and that's to ask the question of how do we
- 4 balance the economic activity of our community versus the risk of transmission. And if
- 5 we find that the fatality rate is not as significant as might be predicted at this point in
- time, then we may very well just focus on the standard public health activities of
- 7 coughing into your sleeve, wearing masks when you're out in public, and things like that,
- 8 much like we saw during SARS in Toronto. They did not take any actions to prevent
- 9 assemblages or to diminish social contact. What they did was just provide continuous
- public health information about containment, if you're ill, stay home and don't engage in
- further exposure. That's not to say we won't see some slow down of the economy and
- some services that will have to be reduced. We may find public transit can't run 15
- minute frequencies because of the availability of drivers, but I think that's all part of the
- discussion that we very well may have when that disease arrives and we understand
- the characteristics of that specific disease.

16

- 17 Councilmember Andrews,
- Finally, what's the shelf life of most flu vaccines?

19

- 20 Dr. Ulder Tillman.
- The shelf life is generally about a year, a year to a year and a half, but the shelf life is
- 22 generally not the problem with the flu vaccine. It's because that virus is always shifting
- 23 and changing worldwide that you've got to produce a new composition each year or
- 24 each season.

25

- 26 Councilmember Andrews,
- Okay, thank you.

28

- 29 Council President Leventhal,
- 30 Mrs. Praisner.

31

- 32 Councilmember Praisner,
- Thank you very much. This is very helpful. Just two points for Gordon. Have you been
  - briefed on Emma and Megan, have you seen Emma and Megan in operation?

34 35

- 36 Gordon Aoyagi,
- Megan and Emma came to our REOC and they gave us a very brief presentation and
- we did talk about what partnership and how we might apply some of that to us. But we
- 39 have not yet fully engaged it.

- 41 Councilmember Praisner,
- Okay. I'd like to follow up with you on it a those issues because the Homeland Security
- funding any of the state funding in the future will obviously be associated with regional
- requirements and -- are actually are going to be made in governance leadership group
- rather than the emergency managers in a way that they used to be. So I think we need



- to work more closely. Comment on the [Kaplan] statement. I guess I would say that it is
- operational for more than agencies that don't have 800 megahertz. And I'm not sure
- what you mean by "or records," because we don't have records either and we have 800
- 4 megahertz as it relates to VIMS and the mile system issues as it relates to Virginia. At
- 5 the recent meeting, I don't remember if you were here, Gordon, but the answer, we can
- 6 wait for the perfect forever and still have police officers who don't have access to
- Virginia data. I don't care that Kaplan is sequential rather than collective. I they we really
- 8 need to accelerate that information being available for our police officers. And the other
- 9 comment I would make is that Mr. Subin and I have had further conversations with staff
- about follow-up with the Public Safety and MFP Committee and 911 implementation on
- the 800 megahertz. And I hope we can follow-up with your participation. Thank you.

12 13

- Council President Leventhal,
- Excellent. We thank you both very much for the follow-up. It's helpful to continue to stay
- informed. Clearly there's much work to be done, but we appreciate the effort that has
- gone into pondering the unthinkable. And we will stay in close touch with you on these
- issues.

18

- 19 Dr. Ulder Tillman,
- 20 I would also like to leave for the Councilmembers just some brochures on the Advanced
- 21 Practice Center that is one of eight nationwide that we have here in Montgomery County
- 22 and some of the work that they're accomplishing in producing tools for the various
- sectors and for public health agencies, as well. So I'll leave these with the clerk.

- 25 Council President Leventhal,
- 26 Excellent. Thank you. The Council stands in recess until the hour of 1:30 when we'll
- 27 have a public hearing. We have a lot of witnesses for today's public hearing so the HHS
- meeting which is scheduled at 2:00 p.m. will start substantially later than 2:00 p.m.



- 1 Councilmember Praisner,
- I think I'm gonna start, Mr. Leventhal should be here shortly. Good afternoon, ladies and 2
- gentlemen. This is the public hearing on Zoning Text Amendments 06-01, 06-02, and 3
- 06-03. ZTA 06-01 would amend the Rural Village Center Overlay Zone to revise the 4
- allowed mix of uses, prohibit certain uses, and limit certain density and green area 5
- requirements and generally amend the rural village overlay zone. ZTA 06-02 would 6
- require site plan approval under certain circumstances, permit certain light industrial 7
- uses, and modify certain street facade requirements to the Mixed Use Town Center 8
- Zone and generally amend the Mixed Use Town Center Zone. ZTA 06-03: Rural 9
- Neighborhood Cluster Zone Transferable Development Rights (TDR) option would 10
- establish a new rural neighborhood cluster TDR zone and generally amend the Rural 11
- Density Transfer Zone. Persons wishing to submit additional material for the Council's 12
- consideration should do so before the close of business March 10th, 2006. The PHED 13
- Committee work session is tentatively scheduled for March 17th, 2006. Please call 240-14
- 777-7910 to confirm. Before beginning your presentation, please state your name and 15
- address clearly for the record and spell any unusual names. Before I begin, Mr. Knapp 16
- and Ms. Floreen I believe are in Annapolis, Mr. Perez is Baltimore on Council business, 17
- may be here shortly, and I expect the rest of my colleagues -- I will have to leave shortly 18
- for a meeting downtown in Washington on Council business. But we have a lot of folks 19
- 20 who have signed up for this afternoon's hearings and I wanted to move forward. On this
- first Agenda Items 7, 8, and 9, the speakers are Greg Russ for Park and Planning
- 21
- Board; Dave Freishtat, Laytonsville LLC; Perry Berman from Michael T. Rose, and 22
- Pamela Lindstrom speaking on her own behalf. Mr. Russ, you're first. 23

- Greg Russ,
- Thank you, Ms. Praisner. The Montgomery County Planning Board reviewed Zoning 26
- Ordinance Amendments 06-01, 06-02, and 06-03 at its regular meeting February 16th in 27
- fulfillment of the recommendations of the Planning Board draft of the Damascus master 28
- plan. The Board supports all three Zoning Text Amendments as amended for ZTA 06-29
- 02, which was to clarify several ambiguities pertaining to proposed set back 30
- requirements in the Mixed Use Town Center Zone. Specifically the reasons as noted in 31
- the staff report, the Planning Board recommends that ZTA 06-01 include adaptations to 32
- the Rural Village Zone that was created for the Darnestown community in the Potomac 33
- master plan for use in three rural villages in the rural areas of the Damascus plan. The 34
- adaptations reflect and protect the very small village character of these communities 35
- from incompatible development without undermining the intentions of the Darnestown 36
- community. ZTA 06-02 provides adaptations to the MXTC zone that was created for the 37
- Olney master plan and the Damascus Town Center. The adaptations foster the creation 38
- of the small town character recommended in the Damascus master plan. ZTA 06-03 39



creates provisions for transfer of development rights option in the rural neighborhood 1 cluster zone for use on six property groups in the Damascus transitional areas and 2 ultimately on other properties in other master plans. I'm also speaking on two other 3 ZTAs as combined here. ZTA number 06-04, which recommends clarification to the 4 circumstances for subdivision of a one family residential lot in the rural open space area 5 of the RNC zone and to require all publicly held or privately held land in the rural open 6 space area of the rural neighborhood cluster zone to be preserved in perpetuity by 7 easement or covenant. Now, as stated in the staff report which was passed out to you, 8 the Planning Board recommends that ZTA 06-04 be denied. To date, there are no 9 master plans or sector plans that designate specifically the conservancy lot exception in 10 the rural open space area. Conceptually it is unclear what the conservative lot 11 amendment is trying to fix so it is hard to support it since it raises some new problems 12 such as what happens to existing master plans, what happens to already approved 13 developments, and how is the master plan to decide where these lots would be 14 appropriate. From a design standpoint a minimum ten-acre lot is a good idea since it a 15 technique that is in line with the concept of providing flexibility in site planning for the 16 RNC developments. It assists in achieving a better plan for more suited to the individual 17 site conditions which is a major part of how the RNC zone is supposed to work. The 18 Board also recommends that public park land not be restricted with easements if it is 19 designated as park land in a master plan. The purpose of designating park land in a 20 21 master plan is to provide for future acquisition of park land for public use and purpose. Our role is public servants and stewards of the land is to implement both the master 22 23 plans and the zoning ordinance to ensure the character of the use is as described and limited by those documents is adhered to. Also speaking on Zoning Ordinance Text 24 Amendment 06-05... 25

26 27

- Councilmember Praisner,
- Well, the hearing on that isn't -- you want to speak on all of them now?

29

28

30 Greg Russ,

31 32

Yes. Well, I was told that I could.

Councilmember Praisner,

33 34

Okay, all right.

35

36 Greg Russ,

o6-05, the Planning Board supports the overall goal of the proposed text amendment to require site plan review in C-2 zones under certain circumstance. In summary, the Board recommends that site plan review be required for any redevelopment of the C-2 property and for any expansion of an existing development in the C-2 zone beyond a certain percentage. The Board did not recommend a specific threshold percentage site plan review but suggested that the County Council and Park and Planning staffs work to establish a figure, preferably based on existing precedent as set forth in the zoning

44 ordinance. Thank you.



- Councilmember Praisner, 1
- 2 Okay. Thank you very much. Mr. Freishtat.

3 4

- Dave Freishtat.
- Yes, good afternoon. My name is Dave Freishtat, 11921 Rockville Pike, speaking for 5
- Laytonsville LLC. We have a piece in the [Echersen] area, which is in one of these rural 6
- area [INAUDIBLE] properties according to the Damascus master plan. We have 7
- reviewed the staff draft and found that it generally is very acceptable to the property 8
- owner. We would have one suggested change. The staff draft presently does not allow 9
- drive-in eating and drinking establishments. These areas are generally automobile 10
- related, they are very suburban, they are very -- small little centers. This would prohibit 11
- the little ice cream stores and doughnut stores. And Lord knows you don't want to 12
- prevent those from happening in these rural areas. I would -- this is just for your 13
- consideration. You might want to allow this as a special exception so that you don't get 14
- the major users coming in that would have an impact on the area, but that these little 15
- mom and pop-type stores that do sell most of their food for carryout could still be
- 16
- allowed to exist. Thank you very much. 17

18

- 19 Councilmember Praisner,
- Thank you. Mr. Berman. 20

- 22 Perry Berman.
- 23 Good afternoon. For the record my name is Perry Berman. I am representing Michael T
- Rose. My address is 7910 Briar Glen Road, Elkridge, Maryland. Michael T. Rose is the 24
- contract purchaser of two properties in downtown Damascus. We are here to speak on 25
- the MXTC Zoning Text Amendment. As you know, that zone has two purposes. One, it 26
- 27 is to create mixed use development pattern, which we support and, two, to support a
- neotraditional type building pattern. It was invented for Olney. The difficulty with that 28
- zone is that Damascus is not Olney. Damascus goes like this. And so there is a great 29
- 30 deal of difficulty with adjusting that neotraditional pattern for an environmentally
- 31 sensitive area. We are trying to deal with that. So we have several suggestions on that.
- Basically, the thrust of that all goes to issues regarding trying to mitigate the impact of 32
- our development -- make sure that our environmental impact on the land is minimized. 33
- So, we're asking for -- that the Board, number one, will be permitted to waive building 34
- setbacks so that -- for both minimum/maximum, which I believe that's already in the 35
- draft, it was in the earlier draft. That the building facade issues -- also the Board have 36
- some ability to waive that concern for topographical conditions, again, because the 37
- ground goes like this. It's not easy to put the same building facade on one piece of land. 38
- The building height that was suggested, there was a suggestion to Marlene Michaelson 39
- in the packet to you to look at the building height issues as MXT zones abut single 40
- family areas. In Damascus, there's actually a great difference of 25 feet in our case, 41
- between our property and another property. And we suggested again the Planning 42
- Board be able to look at that issue when they're looking at the height issues as it abuts 43
- a single family area. Also, we would rather it not refer to a zone but actual single family 44
- uses, some of the single family schools on single family land. We don't believe that 45



that's necessary. And finally there's an open space requirement and we're trying to see if properties under five acres are able to be -- again, 20% set aside be examined on a case-by-case process for properties smaller than five acres. Thank you very much.

4

- 5 Councilmember Praisner,
- 6 Thank you. Pam Lindstrom.

7

- 8 Pamela Lindstrom,
  - I'm testifying against ZTA 06-03. I gather that's what's up now.

9 10

- 11 Councilmember Praisner,
- 12 Yes. All three of those, 01, 02, 03.

13 14

- Pamela Lindstrom,
- And this is more or less a position of the Sierra Club, but I'm speaking as an individual.
- We support the vision that's asserted for Damascus in the draft plan, which is the vision
- of being a small town in the midst of a rural area that preserves the landscape and the
- agricultural of upper Montgomery County. Thus predictably we oppose the increased
- housing capacity in the so-called rural transition area and the establishment of the RNC-
- TDR zone to accomplish that. This zone would be a further blow toward achievement of
- both the intent of the RNC zone itself and achievement of the transition area of
- Damascus. The grossly large houses that inhabit the transition area now are in no way
- 23 a transition between town and countryside. They are bigger than nearly any building in
- the town. You should be worrying about the current RNC/RE-2C, et cetera. Other large
- lot residential zones to try to curb the growth of these extremely big houses rather than
- changing the rules, changing the zoning rules and amending master plans to allow yet
- 27 more of them. It's clear from the text of the plan that accommodating TDRs and perhaps
- a few MPDUs influenced the increase in density that's proposed in the plan. We love
- TDRs and are eager to find more places to receive them, but this is not it. Damascus
- would accommodate only a few at the cost of spoiling the landscape. Instead, you
- should consider removing the obstacles to development at Shady Grove, which would
- accommodate a lot more TDRs and moderately priced housing in a sustainable transit-
- oriented situation. And finally, while I'm here, I would like to express that the -- an
- opinion on the ZTA for the C-2 zone, which is that the C-2 zone should and will be
- discussed in the Centers and Boulevards process and I would really prefer to leave
- amendment to the C-2 zone to see what comes out of that process. I'm sure site plan
- review would be one of the recommendations. But there would be other
- 38 recommendations as well.

- 40 Councilmember Praisner,
- Thank you. Greg, I hope that when we have -- since you're testifying on all of them, I'm
- going to comment and kind of relate the two together. The three we're having a public
- hearing on and your comments on the RNC Zoning Text Amendment 06-04. And that is
- that I think we are all committed to trying to streamline the zoning ordinance. And also
- we have encouraged the Planning Board when we do master plans not to bring a new



- zone with each master plan. However, I think it's important when you do come to us that
- you are clear as to the purpose of that zone and then we can see its relevance in
- another master plan. As Mr. Berman had indicated with the zone being used for Olney
- 4 versus its use in Damascus being topographically different from a geography
- 5 perspective, it's also very different from a size and relevance as far as a town center
- 6 perspective. I -- with due respect want to comment that the reason why I introduced 06-
- 7 04 and am strongly in support of that is that when that cluster zone -- rural
- 8 neighborhood cluster zone was introduced originally in Sandy Spring/Ashton there was
- an entity there to preserve and ensure that the goal of the master plan as it relates to
- the open land would be preserved and protected. And absent that in the Upper Rock
- 11 Creek, it falls to Park and Planning Commission. And I guess my concern is that Park
- and Planning continues to resist having comparable standards and requirements put on
- them as they would put on the private sector. This isn't park land for future
- 14 consideration, for flipping or for encouraging what a community might later on want as
- active recreation. It was not acquired with that intent and it should be preserved to make
- sure that doesn't happen afterwards. So when we have the Committee discussion on
- this, I guess my question is, will Planning Board staff come with an alternative then that
- gives that same protection to Park and Planning owned land that is assumed with
- easements in the Ashton/Sandy Spring area? Okay. I see no lights so we will move --
- 20 I'm sorry. Mr. Subin, go ahead. I apologize.

21

- 22 Councilmember Subin,
- Forgive me for being confused, Greg. The RNC zone was established to cluster in any
- of the rural zones for environmental and other purposes. Correct?

25

- 26 Greg Russ,
- Yes. And character issues.

28

- 29 Councilmember Subin.
- And character. But it was only clustering what was permitted. In other words, you had
- 100 acres you could put up four houses. And you could then come in and cluster the
- four for character, environment, whatever else.

33

- 34 Greg Russ,
- 35 Yeah, whatever the master...

36

- 37 Councilmember Subin,
- Whatever the plan would have had.

39

- 40 Greg Russ,
- Yeah, the master plan sets the densities for that zone.

- 43 Councilmember Subin,
- But there was never any vision, never any intent that could be utilized to increase
- 45 density.



1 2

Greg Russ,

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4

Councilmember Subin, 5

So what is the rationale now for coming in and increasing density in areas that 6 otherwise never were intended to do that? You're making a TDR receiving act area out 7 of the center of Damascus. That's the intent, as I read this. 8

9 10

Grea Russ.

I will certainly take this back. It's an issue that is included as part of the policy for 11

Damascus and I think we should truly discuss this as part of that, the work sessions with 12 13

that. So I will take that -- I will take that comment back to the group as a whole.

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Councilmember Subin.

I know I'm easily confused but please tell your Commission that they've succeeded in making me realize that I'm confused. And that is a hard thing to do.

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Councilmember Praisner,

Okay. I see no other lights. Thank you all very much. Good afternoon, this is a public 20 21 hearing on Zoning Text Amendment 06-04, which would clarify the circumstances for

subdivision of a one-family residential lot in the rural open space area, the rural 22

neighborhood cluster zone, require all publicly held and privately held land in the rural

open space area of the RNC zone to be preserved in perpetuity by easement and

covenant and generally amend the zone. Persons wishing to submit additional material 25

for the Council's consideration should do so before the close of business on March 21st.

27 The PHED Committee work session is tentatively scheduled for April 3rd. Please call

240-777-7910 to confirm the date and time. Before beginning your presentation please 28

state your name and address clearly for the record and spell any unusual names. We

30 have two groups for this session: Wayne Goldstein, Montgomery Preservation, Inc.;

31 Robin Ziek, Greater Sandy Spring Greenspace Land Trust; Barbara Falcigno, Olney

Coalition; Jim Humphrey, Montgomery County Civic Fed; Espy Driscoll, Bowie Mills 32

Civic Association. I think we can fit Susan and Ann Ambler as well. We might as well do this in one panel, I think. We have seats for seven. And Wayne, you're first.

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Wayne Goldstein,

I'm Wayne Goldstein. ZTA 06-04 fulfills the explicit promise of the RNC zone. In 37

exchange for clustering houses, a large percentage of the parcel is set aside in a 38

natural state. However, the only way to ensure that this promise is kept is to guarantee 39

that the land remains that way through the placement of a perpetual easement on such 40

land. It comes as no surprise that the Planning Board members have confused their 41

duty to ensure good planning with their duty as Park Commissioners to maximize the 42

value of the assets of the Parks Department. This agency conflict of interest renders 43

their input almost entirely self-serving and thus can and should be easily disregarded. 44 45

According to a 6/15/04 Council/Park and Planning press release, 78% of Park and



Planning's park land was purchased, 15% was dedicated, and 7% was donated or 1 2 acquired in other ways. If one makes a simple o argument that what one buys can be used for many purposes and what one receives as a required or voluntary donation may 3 come with strings attached, Park and Planning has the freedom to use almost four-fifths 4 of its land. While it is true that much park land is in stream valley, such at nature of park 5 land in areas where what remains for such a use is what is subject to flooding and other 6 restrictions. In areas that were not meant to be intensively developed, environmentally 7 sensitive lands may be suitable for being developed as active recreation or non-park 8 construction if one disregards the needs for healthy forests and streams. In those areas 9 where such holistic concerns for the environment are the current norm, it is necessary 10 to remove future temptations for the expedient use of the land. There is also a 11 cautionary tale in the form of Jesup Blair Park. This 14 acres of old growth trees was 12 given to the state of Maryland by a bequest in 1932 to become a passive recreation 13 park. It was placed under the control of Park and Planning in 1934 and after 70 years of 14 mismanagement had lost 80% of its tree cover. It looks pretty today with its new grand 15 brick and stone pillars and walls, but if the dozens of 250-year-old trees still covered 16 those -- these acres today, they would be far grander than anything constructed by 17 people. Matthew Hansen State Park was also placed under Park and Planning 18 management, which pledged to spend \$30,000 per year on the management. Years 19 went by with nothing being spent even as Park and Planning connived to get millions to 20 21 build a hard surface trail that would greatly alter the nature of this linear park. ZTA 06-04 is the protection for the temptation of Park and Planning for the trust by putting these 22 23 lands in trust with other strong organizations that can hold easements for current and future generations. 24

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Councilmember Praisner,

27 Thank you. Robin?

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Robin Ziek,

Thank you, Councilmember Praisner, for acknowledging the Greater Sandy Spring Greenspace. My name is Robin Ziek, I live at 18000 Bentley Road in Sandy Spring. And we are a local land trust incorporated in 1998 to promote and ensure the preservation. protection, and balanced use of open space and natural resources within eastern Montgomery County in perpetuity. I want to note up front that Upper Rock Creek falls within our six-mile radius where -- when we started, we set out this boundary for holding easements. And we have offered to hold easements in this area, so we want you to note that we can do that and we want to. We currently hold easements on 135 acres of land and this may not sound like much -- and we're always looking for more -- but we're part of a national commitment to land conservation. 33,276 acres has been protected in Maryland alone through private easement donations to groups like Greenspace. Locally Councilmember Floreen recently asked for and received an accounting of land preservation efforts in Montgomery County and the accounting looks impressive. However, we need to acknowledge that looks are not everything. Today we're here to ask you to make a real commitment to land conservation and require that open space that is set aside through the RNC zoning development process will be open space



forever. With the requirement of perpetual conservation easements to third parties such as Greenspace, you will be letting the public know that looks are not deceiving and that you stand up to create a legacy that will be treasured by your grandchildren and their grandchildren. We're perplexed that the Planning Board refuses to stand up for this principle. Because Greater Sandy Spring Greenspace holds a conservation easement on park property in Sandy Spring. And this easement protecting 50 acres of land in perpetuity was done in the spirit of creating the master plan vision for Sandy Spring while acknowledging community suspicion that our government might not hold to that vision over time. In the same vein, Greenspace once had a speaker at our annual meeting who noted that while his gift of an easement on his property tied his hands, he was actually glad it did so it couldn't be tempted by the rising prices so that he would develop his land. He acknowledged the sense that there are temptations to stray away from a vision and he spoke of the really good tools such as easements to land trusts that we had to assure that we don't stray. Please take this step and ensure the major public amenity in the RNC development of our last few remaining large parcels of land in the County will not fall to some future temptation. This will be a great step for our County, where we can join in this national commitment as we strive for a balance with the built and the natural environment. So please vote for ZTA 06-04. Thank you.

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Councilmember Praisner.

21 Thank you. Barbara.

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Barbara Falcigno,

Good afternoon. I'm Barbara Falcigno representing the Olney coalition, an umbrella organization of nine citizens representing more than 2,500 households. We support ZTA 06-04 in order to protect rural open space in perpetuity. If we go back in our memory, the RNC zone traded guaranteed yields for development by providing cluster housing on sewer in areas that were traditionally large lot septic development. And that trade was for the preservation of the rural open space in perpetuity. It turned out the little word "or" -- just two letters -- has a huge impact as evident in "rural open space must be preserved in perpetuity as rural space, either by dedication to park land "or" by application of easement." Park and Planning legal staff will not pursue an easement because the word "or" means they don't have to. This ZTA removes the word "or" and ensures that the land will be preserved in perpetuity. The Planning staff feels designation of park land is sufficient to protect the open space. The community totally disagrees and wants to be confident that the rural open space will never be subjected to the whims of future County Councils as master plans are updated, land use recommendations are changed, "Oh, that park land? Well, let's change that." Or ZTAs redefining open space are contemplated. The dedication of open space to park land does not guarantee it will remain untouched, we've seen it. Examples: Skate parks being built, ice rinks, even schools, such as Sequoia Elementary right in Upper Rock Creek have been built on park land. Without further restrictions the open space, we feel, is at risk. The ZTA 06-04 has been introduced to ensure that the zone will be implemented as it was intended. Last week the Planning Board had discussions on how easements restrict government and that eminent domain can still be used to take the



land for public uses. In this scenario at least there's a defined process -- where the decision would be made outside of the political arena. The Planning Board also pointed out that park lands not used for other purposes without careful consideration has to be replaced two to one. But no one can predict what future pressures will be and an easement adds the additional protection layer. So we urge you to approve ZTA 06-04 so that "in perpetuity" means in perpetuity.

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Council President Leventhal,

Okay. Thank you. Mr. Humphrey.

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Jim Humphrey,

Good afternoon, members of the Council. I'm Jim Humphrey, Chair of the Planning and Land Use Committee of the Montgomery County Civic Federation testifying in support of Zoning Text Amendment 06-04 in particular the proposal to require all publicly held or privately held land in the area of RNC zone be preserved in perpetuity by easement or covenant. When the RNC zone category was created the justification for allowing this clustering together of homes on lots even smaller than required under prior zoning was that such clustering would prevent new homes built on one or two-acre plots from dotting the rural landscape. In this way the same density of housing might be achieved as was allowed under previous zoning, but clustering would achieve the added goal of retention of larger land areas in rural open space to help protect the environment from widespread impervious surface development, to sustain and improve water quality, to preserve trees in order to sustain and improve air quality, and to retain the rural character of these areas by preserving scenic rural vistas. All of these above goals which were touted as objectives of the RNC zone when it was created are undermined when RNC rural open space is used as it was on the County built Seguoia Elementary School in Bowie Mill Park. This proposed ZTA will guarantee that the promises made to the residents of Ashton, Upper Rock Creek, and other areas where RNC zone is applied will be kept and that rural open space will be retained, the environment protected, and rural vistas preserved. Preservation of rural open space in perpetuity as proposed by ZTA 06-04 will provide predictability to the planning process in rural areas. And predictability in land use planning implementation and in our zoning is something desired by residents all across the County. We thank you and urge approval of ZTA 06-04. I'm also testifying in support of Zoning Text Amendment 06-05. I'm told I have five minutes total and so I'm continuing. We thank -- support -- Councilmember Praisner sponsored the ZTA in seeking a new requirement that the Planning Board would have to review and approve a site plan for any C-2 zone development that exceeds 200,000 square feet of gross floor area. At the current time this sized development may proceed by right if a project is determined to meet the standards of the zone, DPS -- Department of Permitting Services can issue the building permit. We agree with Councilmember's Praisner's contention that a 3-story, 42-foot tall development, the current commercial height limit of the zone, with over 200,000 square foot GFA is of such size and bulk that a determination should also be made by the Planning Board through site plan approval that the project meets the recommendations of the proposed site contained in the applicable master plan. At their hearing last Thursday the Planning Board members



discussed changing the trigger point from 200,000 square feet GFA, reasoning there would be no more new greenfield C-2 development of this size in the County. They suggested a trigger based on a threshold of change in size from existing development on C-2 property. Perhaps an add 20,000 square feet GFA or a 15% increase of GFA over existing. We would support such an amendment to incorporate such an added size threshold in the legislation, but only as an additional trigger while leaving the 200,000 square foot GFA limit as proposed in the ZTA. We thank Ms. Praisner for introducing this ZTA and the prior one and we urge the Council's approval of both. Thank you.

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Council President Leventhal,

Thank you, Mr. Humphrey. Espy Driscoll.

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Espy Driscoll,

President Leventhal, Vice President Praisner, and members of the Council, good afternoon. I'm Espy Driscoll, I'm representing the Bowie Mill Civic Association and I live on Foggy Lane in Derwood. We strongly endorse ZTA 06-04 concerning the rural neighborhood cluster zone and request that you support and approve this amendment. Upper Rock Creek is a watershed. The quality of our stream water depends on the health of the land surrounding those streams. There's a significant loophole in the RNC code that would enable the County to subdivide the rural open space, trade it, sell it, or develop it. Without an easement or covenant on the land and conveyed to the County, there is no quarantee that it will remain in its natural state in perpetuity. Indeed the Planning staff report, as you heard earlier, states the purpose of designating park land and a master plan is to provide for future acquisition of park land for public use and purpose. I well know, Bowie Mill park land is now Sequoia School. Residents of the Upper Rock Creek fought long and hard as you may well remember to preserve the high quality of our water, to protect our environmentally sensitive resources, and to maintain the semirural character of the area. We believe that low density RE-1 and RE-2 zoning with septic and well water is the best way to protect the Upper Rock Creek watershed. Planning Board and County Council felt that the RNC zone was an alternative to large lot development for protecting environmental resources and increasing the density. It was a tradeoff. We would have to accept sewer and higher density, particularly with MPDUs, but in return a minimum of 60% of the land would be held in its natural state as rural open space in perpetuity. This was the County's commitment to its residents. This is the reason for rural neighborhood clusters. Otherwise if the open space gets developed in the future, it might as well be called urban neighborhood cluster and no one has met their environmental goals. Montgomery County has a severe water pollution problem. The lower part of Rock Creek is polluted, dying, and dead. Restoration of Lower Rock Creek stream quality depends on the County being able to preserve our Class Three water quality in Upper Rock Creek. It is crucial that all rural open space in the Upper Rock Creek watershed dedicated as park land be protected forever by privately or publicly held legally binding easement and covenants. You told us during many individual meetings, working Committee meetings, planning sessions that the RNC zone was a better way to protect our environmental resources in perpetuity. Clearly this was your intent. It is well documented in the revised



Upper Rock Creek master plan and in the RNC code. Without the approval of the RNC ZTA 06-04, there's no guarantee that future Planning Boards and Councils under even greater pressures would continue to protect the rural open space dedicated to the County as park land in perpetuity. Please stand behind your commitment to the Upper Rock Creek communities and, indeed, the intention and purpose of the RNC zone itself and approve this amendment. Thank you.

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Council President Leventhal,

Thank you. Susan Petrocci.

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Susan Petrocci,

Good afternoon. My name is Susan Petrocci. I am here as a representative of the Greater Olney Civic Association and Norbeck Meadows Civic Association to present our views. GOCA strongly supports ZTA 06-04 and urges the Council to pass it promptly. GOCA has a keen interest in this Zoning Text Amendment because the remaining undeveloped properties in both the Upper Rock Creek and the Olney master plans were zoned RNC. The Olney community was encouraged to support those rezonings based on representations that acreage dedicated as rural open space in the RNC zone would remain rural open space in perpetuity. Strong community concerns led the Council to revise the rural open space provisions of the RNC zone to clarify how such space could be used and to require that it be maintained in perpetuity. Notwithstanding the Council's clear intent about the perpetual status of the rural open space, the Planning Board has taken the position that it is not required to place rural open space dedicated to it under a perpetual conservation easement. The Board apparently believed that it is not bound because the present text of the RNC zone does not specifically apply the requirement to the phrase "public park land." The Board also apparently believes that its hands and the successors' hands should not be tied by such a requirement. In any event, the Board argues, even land covered by a perpetual conservation easement is still subject to acquisition for a public purpose pursuant to eminent domain. GOCA fundamentally disagrees with the Board's position. GOCA believes the Council did intend for all rural open space including rural open space dedicated for public park land to be placed under a perpetual easement and that ZTA 06-04 corrects the earlier drafting error. As for binding the Board's hands, GOCA believes that in accepting and supporting the use of the RNC zone it and other Montgomery County communities made a bargain with Park and Planning, the Planning Board, and the Council to trade off densely clustered development in exchange for the permanent preservation of significant amounts of rural open space. GOCA believes the Board and its lawyers should not now have the unilateral right to change the terms of that bargain. Finally, GOCA believes it should be nearly impossible to break the RNC bargain and that any decision to do so should not be in the hands of the Planning Board, but rather should be made through a public and transparent process such as the eminent domain process under the supervision of the courts. In summary, GOCA strongly endorses adoption of ZTA 06-04 to eliminate any ambiguity about the Council's intent. By taking this action, the Council in turn will send a clear message and reassure the community that the Montgomery County government is committed to and will up to the terms of the RNC bargain.



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- 2 Councilmember Praisner.
- Thank you. Ann Ambler 3
- Ann Ambler, 4
- Good afternoon. My name is Anne Ambler. I'm speaking on behalf of the Sierra Club. 5
- Thank you, Mr. Leventhal, first, for adding me to the speakers list. 6

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- 8 Council President Leventhal,
- You're welcome. 9

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11 Ann Ambler. We strongly support previous testimony that has called for putting in place a mechanism 12 to fulfill the promise made when the RNC zone was created for the Sandy 13 Spring/Ashton area and subsequently used in the Upper Rock Creek master plan and 14 elsewhere. In creating and using this zone, we traded the introduction of sewer and 15 greater density, with its resulting higher level of imperviousness on part of the land in 16 exchange for permanently protecting a larger part. "Preserved in perpetuity" was the 17 language used. The Planning Board has adopted the position that public purpose 18 changes over time so land preserved by being dedicated to park land should not be 19 encumbered with anything that would prevent it from being available for other purposes. 20 21 We agree that indeed the perception of public purpose does change, but the public interests served by preserving land and vegetation to filter water and air is constant as 22 long as humans breathe air and drink water. According to the Countywide Stream 23 Preservation Strategy, Stream Conditions and Trends Report Montgomery County has 24 been losing ground overall for stream quality since the mid-1990s. Some 35% of 25

- monitored streams declined from the mid-1990s to 1999/2001 despite millions of public 26 27 dollars spent in stream restoration. With each stream the banks wash away trees fall in
- and muddy, polluted water surges down to the bay. The ones we've pledged to restore, 28
- remember, because so much land is covered with impervious surface. We're also faced 29 30 with the expense of building a drinking water intake in the middle of the Potomac
- 31 because water alongside the shore has become too muddy for WSSC to clean up. I
- think this Council, by some of its recent actions, does indeed understand the connection 32
- that the very best way to preserve our water resources is to preserve our land, forested 33
- as much as possible. It is less costly in the long run to infiltrate most stormwater where 34
- it falls than to clean up floods and pollution later. This proposal is also consistent with 35
- Chapter 5 of the 2000 Maryland Streamwater Manual that requires easements or other 36
- permanent legal protection on parcels set aside for natural area preservation in 37
- exchange for stormwater structural device credits. Clearly designation as park land is 38
- not enough. We, therefore, urge you to place permanent conservation easements on 39 private and public land, created from the use of the RNC zone. We owe it to ourselves 40
- and to future citizens of the County. Thank you. 41

- 43 Council President Leventhal,
- Thank you very much. I see no questions for this panel. We appreciate your testimony. 44
- Thank you. Agenda Item Number 11 is a public hearing on Zoning Text Amendment 06-45



05, which would require site plan review for the C-2 zone under certain circumstances 1 and generally amend the C-2 zone. An amendment will be considered that would 2 require site plan review for certain projects in the C-1 zone. Anyone who wants to 3 submit additional material for the Council's consideration should do so before the close 4 of business on March 21st, 2006. The PHED Committee work session is tentatively 5 scheduled for April 3rd. Please call 240-777-7910 to confirm the date and time. We 6 have six witnesses on Agenda Item Number 11. They are Stuart Rochester, Tim Dugan, 7 Christopher Jones, Megan Wallace, Kevin Maloney, and Ed Asher. Mr. Rochester, if 8 you're ready, please press the button and begin. Before beginning your presentation all 9 witnesses please state your name and address clearly for the record and spell any 10 unusual names, we don't... 11

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Unidentified Speaker, The Planning Board isn't here?

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Stuart Rochester.

Good afternoon. I'm Stuart Rochester for the Fairland Master Plan Committee. Saddam Hussein's barber was once asked why he always mentioned George Bush's name when cutting Saddam's hair. And the barber explained that Saddam's hair would stand on end and it was easier to cut. Well, in Burtonsville these days, in case you haven't heard, the operative phrase among barbers is "C-2 zone." The problems with the C-2 zone, of course, go well beyond Burtonsville. They're historic and recurring. I'm going to focus on Burtonsville Shopping Center because I only have three minutes and because you won't get a better snapshot of why this zoning text amendment is long overdue. We have in this instance a property with all kinds of constraints next to an elementary school and ringed by the Patuxent watershed. The owner asked for and got the community's support to renovate the existing center with a 100,000 square foot anchor, the size of a Target store, which we supported so long as there was significant other retail and a streetscape that would create the semblance of the pedestrian-oriented center called for in the master plan. With our support the applicant got his preliminary plan approval and with the ink not dry, is seeking the option to substitute a Wal-Mart type building, the equivalent of two Best Buy stores end to end, next to an elementary school and with a sea of parking that would make an absolute mockery of the preliminary plan, not to mention the master plan. It doesn't pass the laugh test for a pedestrian-oriented center but under your current C-2 requirement he and his attorney believe it could pass the zoning test. We all know master plans are notional and now we have a developer arguing that even a supposed conditions in a preliminary plan are notional. You'll be hard pressed to get Planning staff to say anything to the contrary. Without a site plan requirement in the C-2, the fact is you've got no device to prevent an aggressive property owner from gaming the process. For added chutzpah, the developer would have you grandfather his moving Target in this case. For all our sakes and you know I have not been one to play the Clarksburg card or pile on with regard to Clarksburg but I hope you get this one right. Or judging from all the attention this is getting, you're looking possibly at an even worse fiasco and embarrassment and a monument to the



failure of your planning system post-Clarksburg. We urge you to support the Zoning 1 Text Amendment as timely and long overdue. Thank you. 2

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Council President Leventhal,

Thank you very much. Mr. Dugan. 5

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Timothy Dugan,

7 Good afternoon members of the District Council. I'm Timothy Dugan of Shulman 8 Rogers. I represent the BMC Property Group, the owner and developer of the 9 Burtonsville Shopping Center located at the corner of 198 and 29. We oppose the 10 proposed legislation as originally drafted and is proposed to be modified by the Planning 11 Board. We believe that the proposed legislation would seriously undermine the ability to 12 redevelopment the Burtonsville Shopping Center. In addition, we fear the legislation will 13 significantly inhibit the revitalization of C-2 zoned land countywide, especially in areas 14 with older centers such as Burtonsville, Long Branch and Damascus. Preliminarily, I 15 note that the current law, even without site plan approval, imposes compliance with the 16 parking facilities plan that provides for perimeter landscaping, pedestrian walkways, 17 lighting, interior landscaping, up to 5% of the internal -- or a minimum of the internal 18 landscape area with shade trees. So under the current law the interior parking in the 19 site's perimeter are already subject to landscaping and other requirements. 20 21 Consequently the imposition of the site plan requirement is aimed directly at the size and types of stores that can be located inside these centers, i.e. the internal layout. Is 22 23 that not the proper domain of the owner developer of the center who must find the tenants that will be credit worthy for the lenders so that the owner developer can pay for 24 the millions of dollars of infrastructure imposed at preliminary plan? We believe that 25 imposing a site plan approval requirement will convert today's process into a subjective 26 27 one. As you know, the site plan has certain conditions that the Board must find, including that the site plan have a compatibility and attractiveness. And just so the 28 Council appreciates the above point, I provide the political context in which the Zoning 29 30 Text Amendment was rising initially. The Burtonsville Shopping Center has refused to 31 allow others to dictate which stores and which retailers may be located at the redeveloped center. They would not acquiesce to the demands that under all 32 circumstances the Dutch market must remain and further they would not agree that no 33 store may be greater than 100,000 square feet. As evidenced, please see the attached 34 flyer to my statement which was distributed at the shopping center. The flyer's the best 35 example why the Council should not enact proposed legislation. The legislation would 36 give any group the power to dictate the project's fundamental economic parameters 37 even though such group would have no responsibility to confirm whether the 38 parameters are feasible and no responsibility to try to carry them out. We find the 39 premise to be particularly unfair for purposes of the Burtonsville Shopping Center. 40 They've already proceeded through the preliminary plan process and the Planning 41 Board approved the preliminary plan in July. And in doing so, found that the preliminary 42 plan was in substantial compliance with the master plan. BMC was cleared through the 43 preliminary plan process that its store layout was only schematic. Further, at the 44 hearing, the planning staff testified that the layout was conceptual and as further 45



evidence that it was clearly understood Commissioner Purdue asked whether that meant that the boxes shown could all be regrouped. Please consider the rest of my testimony in writing.

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- 5 Council President Leventhal,
- 6 Thank you, Mr. Dugan. Is Chris Jones here?

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- 8 Timothy Dugan,
- 9 Mr. Jones is also with BMC Property. Under the rules apparently only one person can testify, therefore he's...

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- 12 Council President Leventhal,
- Okay, he can submit written material for the record. Megan Wallace.

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- 15 Megan Wallace,
- Megan Wallace. I'm here on behalf of Devin Doolan, who is held up in Annapolis today.
- We represent Westfield Corporation. As you know Westfield owns and operates
- 18 Westfield Wheaton and Westfield Montgomery formerly known as Montgomery Mall and
- also Wheaton Plaza. We have gone through extensive reviews for the Wheaton Plaza
- redevelopment in 2001 in which we submitted a preliminary plan. We got extensive
- input from the neighbors and we made significant changes based on that input. We are
- continuing the process of redeveloping Wheaton Plaza by building out the remaining
- 23 240,000 square feet as well as to convert the soon to be empty Hecht's Department
- 24 store based on the buyout -- the recent buyout that will allow Hecht's to be empty. We
- need the flexibility to pursue and court the retail users who need to use that space
- without the added delay that site plan would require. We believe that this would add at
- least a year to the development time line significant expense. When we have already
- invested more than \$150 million in the Wheaton area with the cooperation of this
- 29 Council and the County Executive with its participation with the parking garage there, as
- well as with the participation with the Wheaton enterprise zone. We stepped up years
- ago when no one else would. Wheaton Westfield is a proud citizen of Montgomery
- County and is anxious to use its capital to redevelop these older centers and is happy to
- do so to help the citizens in the area. We try very hard to be a good corporate neighbor,
- we seek input from the neighbors at all stages of the game. We don't necessarily
- oppose site plan review. However, we do believe that it should be prospective and not
- retrospective in that we don't believe any redevelopment, any small redevelopment
- should require site plan review of the entire site. We ask that you allow us to participate
- with the PHED Committee in drafting the zoning text amendment in a way that would
- apply prospectively and not retrospectively. Thank you.

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- 41 Council President Leventhal,
- Thank you. Mr. Maloney.

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Kevin Maloney,



Good afternoon. I'm Kevin Maloney of Maloney and Metz. I am here today representing 1 the Bethesda -- the Greater Bethesda/Chevy Chase Chamber of Commerce as their 2 Vice President of Economic Development and Government Affairs. On behalf of Greater 3 Bethesda/Chevy Chase Chamber of Commerce, we want to express our opposition to 4 the proposed Zoning Text Amendment to require site plan approval for properties in the 5 C-2 general commercial zone for any development over 200,000 square feet. We 6 additionally oppose the Planning Board's recommendation to require site plan approval 7 for any new development in the C-2 zone. There are existing development standards 8 and building, environmental, and other regulatory requirements applicable to 9 developments in the C-2 zone which have produced numerous quality shopping center 10 developments in the County without discretionary site plan review. The level of scrutiny 11 and discretion proposed in the ZTA and by the Planning Board is usual and 12 unnecessary for Euclidean C-2 zones and will create uncertainty for existing shopping 13 center owners and potential investors. We urge the Council not to compromise the 14 sound and established process for the C-2 zone and jeopardize the ability of property 15 owners to modernize and expand existing aging shopping centers, simply in reaction to 16 concerns about a specific property and specific store. We urge the Council not to 17 approve this unsubstantiated ZTA that will cast uncertainty on our commercial centers 18 and discourage their renovation and modernization with overregulation. Thank you for 19 your consideration of the Chamber's comments. 20

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- Council President Leventhal,
- Thank you. Mr. Asher?

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- 25 Edward Asher,
- Good afternoon, members of the District Council. My name is Edward Hall Asher. I'm 26 27 Vice Chair of the Transportation and Land Use Committee of the Montgomery County Chamber of Commerce. My address is 3602 Houston Drive, North Chevy Chase. I'm 28 here to testify against the Zoning Text Amendment 06-05: C-2 Zone Site Plan Review. 29 30 On behalf of the Montgomery County Chamber of Commerce, the voice of Montgomery 31 County business I want to express the Chamber's strong opposition to the above referenced Zoning Text Amendment and to the revision proposed by the Montgomery 32 County Planning Board. As identified by the Planning Board's technical staff, the 33 proposed ZTA is unclear about when the site plan review would apply under its terms. 34 Its site plan review is limited to a building permit application for at least 200,000 square 35 feet of gross floor area, or it doesn't include a building permit for any use of a shopping 36 center that already has -- that already includes at least 200,000 square feet of gross 37 floor area. Most importantly, both the Zoning Text Amendment as drafted and the 38 proposed revisions from the Planning Board place no limit on the extent of the site plan 39 review. The Planning Board proposal would require site plan review for small additions 40 or modifications. The Board proposal would provide site plan review for small additions 41 or modifications. Unanswered is the question about whether the site plan review would 42 be limited to that floor area or would include the entire existing shopping center. Under 43 the Planning Board proposal minor revisions and additions to an existing shopping 44

center could end up requiring major revisions to the entire site, including curb cut



- locations, parking layouts, landscaping, pedestrian circulation, lighting, et cetera. It
- 2 appears from the Planning Board discussions of the zoning text amendment that the
- 3 Board's interpretation is that site plan review would encompass the entire shopping
- 4 center site. This zoning text amendment and the proposed Planning Board revisions to
- 5 it would actually work as a disincentive to shopping center owners to make even modest
- 6 additions and/or renovations to existing centers. The cost of undergoing a full blown site
- 7 plan review process for the entire shopping center would simply not be worth the
- 8 anticipated benefit of the addition or renovation. With the number of existing older
- 9 shopping centers in this County the District Council should be taking steps to
- encourage, not discourage the cost-effective renovation and modernization of such
- centers. The Chamber urges the District Council to reject the Zoning Text Amendment
- and the Planning Board's proposed revisions to it. Thank you.

13

- 14 Council President Leventhal,
- 15 Thank you very much. Mr. Dugan, what is going to happen with the Amish store in
- 16 Burtonsville?

17

- 18 Timothy Dugan,
- We don't know, Mr. Leventhal. There's a lot of stores in Montgomery County where you
- 20 could ask me the same question and we don't know either. They all make their own
- independent business plans and under all circumstances at all shopping centers they
- have to evaluate where their location is [INAUDIBLE] and what are the options that are
- 23 available. In this particular instance where we're trying to redevelop this center it is not a
- certainty that every redeveloped center guarantees a particular retailer that they can
- 25 stay in perpetuity.

26 27

- Council President Leventhal,
- Okay. You got nine politicians up here and you're trying to persuade us not to vote for a
- 29 piece of legislation that's been introduced. And the question is gonna be "Okay, what
- happens to the Amish Center?" What's gonna happen to the Amish Center? We are
- 31 planning the redevelopment of that center...

32

- 33 Councilmember Praisner,
- 34 Your mic's not on, Tim.

35

- 36 Council President Leventhal,
- Yeah, press the button.

- 39 Timothy Dugan,
- We are planning the redevelopment of that center if it is possible, if it is cost effective.
- With respect to the Amish, with respect to all the other tenants out there, when their
- leases are going to expire, it is not certain at this juncture without the ability to identify
- 43 the anchor which will fund a possible redevelopment, it is not possible to guarantee that
- any of them can remain there. That's where they stand right now. I do not know an



answer to your question, "Where exactly is the -- are the Dutch Market?" Are they going to remain or are they going to relocate? I don't have an answer to that.

3

- Council President Leventhal,
- 5 Hmm. Well, okay. I mean, you -- your testimony comes at this issue as a matter of
- 6 principle that there should be a principle upheld that the owner ought essentially be able
- to be engaged in complex negotiations with different tenants depending on credit
- 8 worthiness and appropriateness for the owner's vision of the site and all of the testimony
- 9 here was very helpful and the testimony against the ZTA made I thought some very
- compelling points. I appreciate the BCC Chamber and the County Chamber's points on
- this, so I'm listening. However, it's going to be necessary for your client -- I will not be
- the only one who will ask this, to be clear on what happens to this very popular
- community asset. So I'm making a statement now, not asking a question. If the answer
- 14 is...

15

- 16 Timothy Dugan,
- We don't know the answer to that question. We don't control the answer to that
- question. Unless we were required to guarantee a spot on that center. That is possible
- that if someone demanded that as has been demanded. That that is impossible to
- 20 accomplish on that site, Mr. Leventhal. The Amish Market, those -- that retailer is a
- business. We don't -- they don't depend on us for their economic or business decisions.
- We can afford them the honest answer to "What are the circumstances under which you
- might possibly be able to remain there?" Just like any other business that's out there.
- We're not some sort of paternal organization. Nor do they expect us to be.

25

- 26 Council President Leventhal,
- Okay, from time to time we have witnesses who, along with their testimony, attach
- exhibits that harm the effectiveness of their testimony. So you've issued -- you've given
- us testimony and you've attached a flyer that states "The Bethesda owner of the
- 30 Burtonsville Shopping Center has notified the Dutch Country Market that he will be
- 31 removing them."
- 32 Timothy Dugan,
- That's not true, Mr. Leventhal.

34

- 35 Council President Leventhal,
- That was my question, Is that true?

37

- 38 Timothy Dugan,
- That's not true, Mr. Leventhal.

40

- 41 Council President Leventhal,
- That's not true? The owner has not notified the Dutch Country Market that he will be
- 43 removing them?

44

45 Timothy Dugan,

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This transcript has been prepared from television closed captioning and is not certified for its form or content. Please note that errors and/or omissions may have occurred.



I just answered your question, Mr. Leventhal, and I also answered it earlier when I said that they don't know. Either that tenant or any of the other tenants where they stand until they can determine how they can redevelop the center and what tenants may or may not be able to remain there. That is a level of uncertainty that they don't have today.

5 They cannot guarantee any of those tenants remaining there at this point.

6 7

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Council President Leventhal,

Is your client here? Is that Mr. Jones who wants to speak? Come on up. Press the button, Mr. Jones, and introduce yourself for the record, please.

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Chris Jones,

My name is Chris Jones and I'm president of BMC Property Group. And, again, there is uncertainty here. But it's an uncertainty that the Amish are well aware of. And I think if you happen to stop by, and I can give you names of the people at the Amish Market to talk to. They could tell you: A. that we've been in very open conversation with them for some time. We have not given them notice. We have explained what the variables are in our development, what the uncertainty is in our development, what the conditions are upon which they might be able to stay, what the conditions might be under which they might have to leave. We are working with them at no charge. We are trying to do contingency planning. Our preference, if we can figure out a way to do it, would be there to keep them in the center. They pay a full market rent. They've been our tenant for 20 years. They have a great reputation in the community and we value them. I'm a life-long resident of the County; I shop there and you can go in there and ask them their opinion of me. And I have no -- they're not here because they don't generally engage in political process; it's against their culture to get involved in politics or confrontation. But they are also extremely honest and straightforward people. If you were to personally go in and ask them, they would give you some very personal and straightforward answers I think that might surprise you. The fact that flyer is given to you because it is full of false statements.

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Stuart Rochester,

32 I really have to respond at some point, please.

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Council President Leventhal,

When Mr. Jones is done I'll ask you to respond.

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Chris Jones,

That's fine. We have -- our preference would be to keep them in the center if we can, we have not given them notice, despite what the flyer says. And they will agree I have not given them notice. However, being a responsible landlord, trying to look after the best interests of a tenant, I have warned them that the possibility exists that they might have to relocate. I have engaged with them for months now in contingency planning. We are eager, if possible, if we can't keep them in our center to keep them in Burtonsville. But there's a limited number of available sites. There's very limited zoning, there are very few stores. They want to double their size. I don't know whether I can accomplish that in



my center. But they do so much business they need to double their size, so we are looking around Burtonsville. We are expanding, as a contingency, to look along the entire east side of the County -- that corridor, which is ideally where they would like to remain. We are looking all over on their behalf. We will not receive any commissions for this or any compensation. We are doing this because we owe them that as good tenants. Again, I think that would confirm that if you were to ask them that question. Again, I don't know what my building envelope is, at this point. I don't have an anchor tenant yet, I don't know what size the anchor tenant is. The pool of anchor tenants is a very limited pool. You can name the number of real anchor tenants, and by that I mean grocery stores on up, on one hand. There may be a dozen of them. Some are already in the area and they're not coming, so that limits it. I have publicly pledged that it will not be Wal-Mart or any of their affiliates. I have publicly pledged that for years and I will publicly pledge it here today. I have publicly pledged that it will not be K-Mart, because those are the two tenants that the community as a whole have told me they oppose. But at some point, I have to say I have to have an anchor. I have over \$8.5 million of impositions at the preliminary plan before I can even get started. And I have -- at some point something has to offset those costs. And I have nothing to offset those costs at this point in time. 

Council President Leventhal,

Okay, well, just be clear -- and I'll get to you in just a second Mr. Rochester -- For many of us, I mean the sponsor of the ZTA is very familiar with the ZTA, but for many of us, we're sitting here, as we often do in public hearings, getting educated about the issue for the very first time. And as a large principle matter, I don't have a view yet as to whether site plan approval should be required for shopping centers. That's not something on which I've formed an opinion. Issues like the future of the Amish Market really get the attention of elected officials. So I share that with you as you determine your strategy on working on this issue downstream. Mr. Rochester.

Stuart Rochester,

Thank you, Mr. President. First of all, there's not a statement in the flyer that is inaccurate. I did not compose it, but I looked at it. The Amish have absolute integrity. They told myself, personally, and many others that there is no place for them, that they do not believe, based on their conversations with Mr. Jones, that there will be any place for them in the new center, which cuts precisely to the issue that I have talked about. The whole point is that if Mr. Jones feels he's entitled to literally any size of an anchor on this constrained site, even if it's incompatible with the scale and character of the surrounding area, with the substantial conformance that's required to master plan and to the other site constraints, including next to an elementary school, if he goes to the larger anchor -- By the way, we supported the 100,000 square foot anchor which is the size of the Target in Calverton, okay? If he goes to the larger anchor, there is not physically room for the other uses on the site. That's the whole point. You don't have a retail -- you don't have a Town Center. You end up with one auto-dependent big box with a fringe of token retail. That's the entire issue here. He believes he can do it given the lack of a site plan requirement and the Planning Board kind of throws up its hands and says, "Well,



we're not sure whether he can or not." That's why you need to pass the zoning text amendment. It does not pass the laugh test that he does not have value and word on this particular center with an anchor the size of a Target and with the other stores that we supported. We supported the preliminary plan against our better judgment, frankly, but we gave him the benefit of the doubt on that. And to now say that the community is demanding something is really the height of hypocrisy and exaggeration.

7 8

- Council President Leventhal,
- 9 Ms. Praisner.

10

- 11 Councilmember Praisner,
- Well, I think this is unfortunate because the Zoning Text Amendment deals with C-2
- zones. It doesn't deal with Burtonsville, Burtonsville happens to be a C-2 zone. The
- discussion around what control a property owner has or does not have is exactly the
- rationale for having site plan review on a C-2 zone in the development of this size. And
- the point is that we're talking about commercial zones carrying a significant role in the
- future with a Planning Board having little or no input -- in the community, little or no input
- beyond illustrative documents that are presented them in the very preliminary basis.
- And given the mandates and suggestions for what should happen in the C-2 zone, it
- seemed appropriate to me and as it appears appropriate to the Planning Board as well
- that C-2 zones should -- of a certain size should require site plan approval. At this point,
- 22 no one other than the property owner has control over what happens on a C-2 zone
- once you get past that preliminary interaction with the Planning Board.

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- 25 Council President Leventhal,
- 26 Mr. Silverman.

27

- 28 Councilmember Silverman,
- 29 Thank you, Mr. President. A couple comments and couple questions. The first one is I
- received an e-mail from the East County Citizens Advisory Board indicating that they
- would like to express their views on this until April 5, based on what their meeting date
- is. So the first thing I would request is that the record be kept here until April 10th. And
- second of all I will not schedule a work session on April 3 on this Zoning Text
- 34 Amendment. Let's pick a date after April 10th.

35

- 36 Council President Leventhal,
- Is there an objection to holding open the record until April 10th?

38

- 39 Councilmember Praisner,
- 40 No.

41

- 42 Council President Leventhal,
- Hearing none, we'll hold the record open.

44

45 Councilmember Silverman,



- Okay. Secondly, regardless of however we come out on this issue, the last time I checked, I don't think this County Council or even the Planning Board can mandate a
- 3 specific store being on or not on a site. If there's a perception out there somewhere that
- 4 if we passed this, even if it was just limited to this one shopping center which is in
- 5 controversy, that that would protect and preserve the Amish Dutch Market -- which I
- shop at as well -- that's hardly gonna be the case. For all we know the rents of all the
- small shops could double and by the way, that's exactly what happened in downtown
- 8 Silver Spring. We've got a bunch of tenants who are -- I hesitate to use the word
- 9 "displaced" because it is the market. But as a practical matter, when downtown Silver
- Spring project was created, guess what? The landlords of the buildings around there
- decided they were gonna raise their rents and so people that had been there,
- businesses had been there for a long time had to find other places in Silver Spring
- because they couldn't afford those rents. I don't think there's anything we can do or the
- Planning Board can do that is going to guarantee the retention of the Amish Market. On
- the issue itself, though, a couple questions. First I have a question for legal staff. If you
- can't answer this now, then let's get an answer. But the Planning Board recommended
- that we amend this somehow or another -- I guess I would call downward -- to cover
- projects that are less than 200,000 square feet. So the first question I have out of the
- gate is whether this advertisement that would have been put out was broad enough to
- 20 cover regulating site plans at 50,000 square feet of gross...

21

- 22 Ralph Wilson,
- Yeah, sure, You can reduce it. The advertisement...

24

- 25 Councilmember Silverman,
- No, no, I mean what the Planning Board has recommended that they'll capture a whole
- 27 group of C-2 projects that would not be captured by a zoning text amendment that says
- that it's going to apply to a commercial use in the C-2 zone with over 200,000 square
- feet. My question is, did the advertisement just relate to site plan in the C-2 zone or did
- it say site plan in C-2 zones with over 200,000 square feet? Do we have an answer to
- 31 that now?

32

- 33 Ralph Wilson,
- The advertisements did not specify to it. It said "certain size." And we put a general
- 35 admin clause in, so...

- 37 Councilmember Silverman,
- Well, one of the -- let's just say one of the challenges I have looking at this list that the
- 39 Planning Board provided to us of, you know, gross floor area space, I mean, 37,000
- square feet, I mean this is all over the place. That doesn't sound like that was the
- sponsor's intent. I have got a real question, if we decide to move in that direction,
- whether people out there really know that they're going to be caught up in this. I guess
- we can try to start addressing it, see where the Committee might go. The second
- question, which I'll have for the Planning Board at the work session is I would expect
- 45 that when the Planning Board comes, because you didn't testify today, or did you? You



testified earlier? Okay. I want to budget projection on what it will cost -- what budget amendments the Planning Board will have to cover reviewing all of the C-2 site plan amendments that you will have to review if we pass this in the form in which you all have recommended it be passed. Because that captures a lot more than I guess the handful of asterisks that are on here. And I'm -- I, for one, have absolutely no intent of supporting a zoning text amendment to then turn around after it's implemented and to find out that the Planning Board doesn't have staff to process, you know, the dozens and dozens of changes that could possibly occur. So, Greg, tell your folks if they want to stick to their position that they should apply to a lot more, then they better have a budget amendment prepared so we know what kind of costs are going to be associated with it. And I'd also like to understand the timeline from the Planning Board for review of site plan amendments now for commercial projects. I'd like to get some idea about how long these processes take because we've obviously heard concern about delay. I'd like to get some better sense about that. And then we'll just go ahead and start tackling it. Appreciate if we can get some answers to these things. Thank you. 

 Council President Leventhal,

Okay. That's all for this panel. Thank you very much. Agenda Item 12 is a public hearing on Bill 2-06: Collective Bargaining - County Employees - Fact Finding, which would add a definition of confidential employee to the County employees collective bargaining law and exclude confidential employees from certain bargaining units, require the certified representative and employer to engage in fact finding after an impasse is reached and to resume bargaining after receiving the fact finding report of the mediator arbitrator, revise the applicability of the collective bargaining law to certain temporary seasonal or substitute employees, revise the collective bargaining calendar for certain bargaining units, and generally amend the law regarding County collective bargaining. The Management and Fiscal Policy Committee work session will be scheduled at later date. Anyone who wants to submit additional material for the Council's consideration should do so by the close of business March 14th. We have three witness, Mr. Joe Adler, Mr. Marvin Weinman and Mr. Bob Stewart. Mr. Adler, please press your button and state your name clearly for the record.

Joe Adler,

Thank you, Mr. President, my name is Joe Adler. For the record, I am Director of the Montgomery County Office of Human Resources here on behalf of County Executive Doug Duncan to testify in favor of Bill Number 2-06. As you all know, the current County collective bargaining law allows arbitration -- binding impasse arbitration for all three of the union representatives. The arbitrator has to pick the last, best offer of either the union or management, but cannot in a way pick one or try to settle his own -- his or her own settlement. This Bill, 2-06 would impose the step of fact finding after mediation but before arbitration. The impasse neutral must hold an informal hearing and then both sides would be made aware of how that impasse neutral feels about the specific items, rather than the entire package that's still in dispute. The parties would have the opportunity to go back for a limited period to try to negotiate on those items, knowing how the impasse neutral feels about them. So we feel one side or the other would then



drop some of these items and then whatever is not settled would then go to final offer 1 2 arbitration as it exists now by package. We believe that adding this step would strengthen the bargaining process because some of the unions especially my buddy 3 here, Mr. Stewart, representing employees from various different departments, various 4 different classifications, may have a number of legitimate -- well, he's my buddy right 5 now -- legitimate issues that cannot be settled in a final offer and then they have to be 6 taken off the table. This gives an opportunity for those issues to be heard and for the 7 impasse neutral to make his or her feelings known before we settle the item. One of the 8 alternatives to fact finding would be to have final offer arbitration by item. We believe 9 that -- we, the administration. I believe, is opposed to this because we believe that it 10 removes the incentive to reach a settlement at the bargaining table. But again, adding 11 fact finding, which is totally voluntary, at this process would strengthen the bargaining 12 process because, again, it would allow both sides to put their issues on the table and 13 have the neutral decide one way or the other on those items without the hammer of a 14 final offer arbitration. The other two items on this bill clarifies the bargaining status of 15 certain temporary seasonal and substitute employees and would also make clear that 16 employees designated as confidential, those who have a role in collective bargaining, 17 would be classified as confidential and they would not be part of a bargaining unit. So 18 again, all of these three amendments we believe -- or the three amendments to the 19 bargaining law strengthen the bargaining process and we urge favorable passage. 20

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Council President Leventhal, Thank you, Mr. Weinman?

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Marvin Weinman,

Yes. My name is Marvin Weinman, I'm President of the Montgomery County Taxpayer League. I'm here to testify in opposition to Bill 02-02 -- well, portions of it. The third rail of national politics is Social Security. The third rail of Montgomery County politics is labor negotiations. Let's look at chart one and what we believe and respect is the right of the union to maximize salary and compensation for their bargaining group, but let's try to keep a level playing field during negotiations. The typical collective bargaining agreement has placed significant restrictions on County negotiations. MCEA bargaining agreement is over 160 pages. There are other bargaining agreement restrictions that have resulted in what many consider unsustainable budget increases. But there's been talk many times -- but in the fall of 2003, I was a member of a workforce sustainability task force. The President of MCGEO participated, took exception to direction of a broad range of items to be discussed. His rational was that the items were related to the collective bargaining agreement and not appropriate for discussion by the task force. I took exception to the task force report and issue a letter to the Council President. My letter of November 21st, 2003 is provided in Attachment 2. We have excessive contracts in many areas that are unsustainable. The firefighters' contract that was passed last year, provided a 69% increase in salary over the six-year period. No actuarial cost impact data for reduction in service time was provided. 8% interest on drop program, deferred retirement, was also another feature. Let look at Bill 02-06. The reason the Taxpayer League opposes a major change, it provides another County



- negotiation restriction with no actual benefit for the County during the negotiation
- 2 process. The change allows for mediation arbitrative fact finding and arbitration of any
- contract issue prior to entering into required final binding arbitration. The supposed
- 4 justification is that it will expedite negotiations. If the mediator/arbitrator identifies
- 5 support of an individual item that will take it off the table when any negotiation impasse
- on remaining issues go to binding arbitration. A second binding arbitration is always
- 7 required. Saving time is not a real advantage to anyone who has been involved in
- 8 contract negotiations knows that "the last as long as" rule allows for participant to press
- 9 for all available beneficial negotiated options. We see an example of that in the current
- Major League Baseball/D.C. stadium negotiations. A second change issue is
- redefinition of the negotiation schedule dates, which in fact actually delays final
- arbitration by 14 days, from February 1st to February 16th if the Bill 2-06 is approved.
- 13 It's important that the Council... [BEEPING]

14 15

- Council President Leventhal,
- 16 Finish your sentence. Finish your sentence, Marvin.

17

- 18 Marvin Weinman.
- Okay, it's important that the Council take action to redefine negotiation schedules to
- 20 start it earlier if necessary and accommodate public testimony following MFP
- 21 Committee review, prior to Council action -- it's a long sentence...

2223

[LAUGHTER]

24

- 25 Marvin Weinman,
- as proposed contract in the past there has been a lack of complete cost data associated
- with proposed contract changes. Thank you.

28

- 29 Council President Leventhal,
- Thank you, Marvin. Bob Stewart.

- 32 Bob Stewart,
- 33 Mr. Chairman and members of the Council, actually, what you have before you is --
- reflects a significant compromise between the union and the County Executive and staff
- that we worked out over the last year, year and a half. As many of you recall, we came
- a year ago seeking line item arbitration and the County Executive not only opposed it,
- but there were significant opposition by Councilmembers and concerns that it would --
- that it would facilitate a non-conclusion to bargaining. What we have before you is, I
- think, a significant compromise that doesn't get to line item binding arbitration, but most
- of you know that we have two large bargaining units in the County, a service labor
- trades unit and an office professional technical unit. And those are in the trade what we
- refer to as horizontal bargaining units. In other words, those bargaining units and their
- job titles cut across every department in County government. As a result of that, we
- have a lot of issues that bubble up during our preparations for negotiations. From
- significant numbers of bargaining unit employees who have working condition items that



- are departmental specific, even sometimes divisional specific, right on -- or health and
- human services case loads, a number of different issues. But with the "winner take all"
- binding arbitration, their package, our package, and you have to risk everything at the
- 4 end. Unfortunately, a lot of those working condition items that are -- that have
- 5 comparability in surrounding jurisdictions, they are not an extreme proposals, get
- 6 shunted aside and because the union feels that it's too risky at the end to risk everything
- on behalf of those specific issues. Now, while the Council and the Executive did not
- want to go to line item binding arbitration, we accepted that. We tried to come up with
- an alternative that we could both live with and this is what you have before us.
- 10 [BEEPING]

11 12

- Bob Stewart,
- Just take the periods out, right?

14 15

- Council President Leventhal,
- Right, finish your sentence.

17

- 18 Bob Stewart,
- 19 What you have before you is a proposal that we think is the best of both worlds, giving
- us an opportunity to get to those issues with the mediator's feedback and without risking
- everything. And if we get that feedback, then we can take those -- we'll forward those
- 22 issues or take them back.

23 24

- Council President Leventhal,
- 25 Thank you. Mr. Denis?

26

- 27 Councilmember Denis,
- Thank you, Mr. President. As lead member for personnel, I just have a question. I
- appreciate learned Council's observations in the packet. And Mr. Weinman, we have so
- many third rails around here, we could start our own electric company, especially this
- week. But I wonder if the panel could help me -- maybe help us understand what
- happens now under impasse? And how -- and how would the Bill change that?

- Joe Adler,
- I'll take a crack, Mr. Denis. Under the current bargaining law for -- and it's equivalent for
- all three with different deadlines. If we get to what is called an impasse state and if there
- is still no contract, then we notify the arbitrator who's been preselected and he or she
- has dates available and that person comes, meets with us and for at least a day or two,
- sometimes three, attempts to mediate by going back and forth between the parties to try
- 40 to settle what he or she considers nonimportant or nonmajor issues. At the end of that
- 41 period, whatever is not -- if it looks like the parties are holding firm on their positions,
- whatever is not settled, the arbitrator then says "In a week we're going to go to full scale
- hearings, prepare yourselves." And then we have hearings and as Bob said, both sides
- present their evidence on the package. Now both sides at that point pare down the offer
- because, again, they don't want one thing to stick out and then risk the entire offer. And



- we hold hearings and then the arbitration makes the decision, one side or the other,
- winner takes all. The difference between what we have now and this proposal is that we
- would then have an additional separate fact finding where both sides would have an
- 4 informal hearing on the issues that they want the arbitrator or the impasse neutral to
- 5 consider. That person then would come back within a relatively brief period of time and
- says "I agree with the union on this" or "I agree with management." We both know at
- that point either to try to settle that or drop it from our package and move on, rather than
- 8 try to waste a whole lot of time convincing each other that it's something that we must
- 9 have. So the idea is that neutral would take a look at the packet, come back and say,
- These are things that I agree with the union, these are things I agree with
- management." We then would have a week or two to try to negotiate. If we still don't
- make it, then it will still go to final offer arbitration, winner take all.

13

- 14 Councilmember Denis,
- So it's the Department's view that under this bill, you would have a situation where could
- you provoke a resolution of the matter as opposed to going to arbitration, the process
- 17 you first outlined.

18

- 19 Joe Adler,
- 20 That is correct. That is our belief.

21

- 22 Councilmember Denis,
- Okay. Mr. Stewart?

24

- 25 Bob Stewart,
- You know, one cannot underestimate the significant disincentive for both parties to go to
- binding arbitration. While we've had that available since 2000, we've not gone to binding
- arbitration one time in our negotiation's history. And I think there's been two
- 29 negotiations. But if, during the mediation process, we see that our arguments are not
- prevailing on 2, 3, or 4 issues, we're going to take those off the table. And, likewise, if
- the County perceives through the feedback of the mediator that our arguments are
- substantive and reasonable, it encourages them to then, let's find a -- reach an
- agreement on and settlement on those issues. And it's really a more effective process at
- getting to some of the smaller department or working condition issues that was at least
- the union's goal on this issue. And most of those issues are -- don't have, you know,
- 36 economic impact.

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- 38 Councilmember Denis,
- 39 So this is viewed as a dispute resolution mechanism?

40

- 41 Bob Stewart,
- 42 Yes.

- 44 Councilmember Denis,
- 45 Mr. Weinman, did you want to comment?



12 Marvin Weinman,

- 3 Correct me, maybe I misunderstood, but once you go into the fact finding arbitration,
- 4 you'd still have to go to binding arbitration...

5

- 6 Joe Adler,
- 7 **If...**

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- 9 Councilmember Denis,
- 10 Only if...

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- 12 Joe Adler,
- 13 If they don't have a settlement. In other words, if after the fact finding you have
- 14 outstanding issues...

15

- 16 Marvin Weinman.
- But if you disagree you still have to go to binding arbitration.

18

- 19 Bob Stewart,
- 20 Right.

21

- 22 Marvin Weinman,
- 23 So it really -- if there is this agreement, it still becomes a binding arbitration. You don't
- have to agree. So you really -- if there's a problem, you still have to go through binding
- 25 arbitration two steps. So there is not any savings if you disagree, choose not to accept
- the fact finding.

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- 28 Councilmember Denis.
- 29 Right. Unless the report inspires an agreement. I guess that's the whole theory of the
- 30 bill. Anyway. Okay, thank you very much.

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- 32 Council President Leventhal,
- Okay. Well, thank the three of you very much. Let me just say for everything who is here
- for the Health and Human Services Committee meeting on the Grafton School follow
- up, that meeting will probably commence at 3:30. So if you have phone calls you'd like
- to make, or you'd like to get a cup of coffee or something. We do have one more public
- 37 hearing to get through and then we'll take a brief recess just to let everyone who's here
- for that meeting plan their afternoon. We're sorry that it's running late, really very sorry. I
- know it's an inconvenience. We should have budgeted a lot more time for this public
- hearing. Agenda Item 13 is a public hearing on Bill 3-06. Mr. Silverman, did you have a
- 41 point of order?

- 43 Councilmember Silverman,
- Yes, just to comment. I apologize, Mr. President, I have to leave because I have a
- 45 3:00... You don't have to wait for me to finish. That's all right. I have to go to a 3:00



- meeting and what I noticed was that there are only two people testifying, one from HOC
- 2 and one from Park and Planning in connection with the range of supplementals that
- have to do with the one-time expenditure of resources. The guestion that I'm going to
- 4 have for the School system, Park and Planning, and the Executive branch is in light of
- the County Executive's budget, regarding the capital budget, as it stands right now, do
- 6 you still want these resources ahead of what is not in the capital budget? And I'm
- 7 particularly interested in knowing where the school system is on that. Thank you very
- 8 much.

9

- 10 Councilmember Denis,
- 11 We're going to tell 'em...

12

- 13 Council President Leventhal,
- But that's not a question for this afternoon?

15

- 16 Councilmember Silverman.
- 17 **No.**

18

- 19 Council President Leventhal,
- 20 You'll be looking for information on that in the course of the budget?

21

- 22 Councilmember Silverman,
- Yes, yes.

24

- 25 Council President Leventhal,
- Very Good. In is public hearing for a Bill on 3-06: Consumer Protection Revisions, which
- would prohibit certain merchants from engaging in certain unfair trade practices, create
- 28 an administrative hearing process to adjudicate violations of the County Consumer
- 29 Protection law, clarify the County's authority to enforce the County protection
- enforcement law, repeal obsolete provisions of and update terms in the County
- Consumer Protection law, and generally amend the County Consumer Protection law A
- Planning, Housing and Economic Development Committee work session will be
- 33 scheduled at a later date. Anyone who wants to submit additional material for the
- Council's consideration should do so by the close of business March 17. We have four
- witnesses. Mr. Eric Friedman, Sydell Rappaport, Steve Hannan, and Candace Johnson.
- 36 Before beginning your presentation, please push the button in front of your microphone
- and state your name clearly for the record. Mr. Friedman?
- 38

39 Eric Friedman,

- 40 Good Afternoon. For the record I'm Eric Friedman, Acting Director of the Office of
- Consumer Protection. I'm here on behalf of the County Executive, Douglas M. Duncan
- 42 to testify in support of Council Bill 3-06: Consumer Protection. Montgomery County's
- commitment to Consumer Protection and to maintaining a fair marketplace is nationally
- recognized and contributes to our economic vitality and quality of life. Montgomery
- County's Consumer Protection Act was originally enacted in 1971. For the past 35



years, it has served as a foundation upon which we structured a Consumer Protection 1 Office to resolve thousands of consumer complaints, investigate unfair deceptive acts, 2 educate consumers and businesses, take law enforcement action against violators, 3 license certain businesses and reach out to vulnerable consumers. With the enactment 4 of Council Bill 25-05, a newly independent Office of Consumer Protection has been 5 organized to ensure that Montgomery County will continue to deliver topnotch services 6 in protecting our residents from consumer fraud and deception. The ability of our new 7 Office of Consumer Protection to operate efficiently and effectively depends in large part 8 upon having a protection law which is clearly written, provides sufficient legal authority 9 and reflects the challenges present in today's marketplace. The proposed revisions in 10 Bill 3-06 are designed to improve complaint handling enforcement activities by creating 11 an administrative hearing process, better defining deceptive trade practices, repealing 12 invalid provisions, and correcting outdated references. These revisions were drafted in 13 consultation with the Office of the County Attorney and with the assistance of the 14 National Consumer Law Center, a recognized authority in consumer protection law. We 15 all turn to the Office of Consumer Protection when we're concerned about a deceptive 16 business practice or when we have been victimized by a fraudulent scheme. These 17 revisions will ensure that our Consumer Protection Office will continue to have the ability 18 to take the necessary action to address these problems. We look forward to working 19 with the Council in its deliberations on this legislation. Thank you. 20

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Council President Leventhal, Thank you. Ms. Rappaport?

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25 Sydell Rappaport,

My name is Sydell Rappaport, I'm here as Co-Chair of the Advisory Committee on Consumer Protection to testify in support of Council Bill 3-06: Consumer Protection Revisions. I'm a retired attorney and previously served as a Deputy Attorney General in the state of New Jersey assigned to the Division of Consumer Affairs. I know from that experience that it's important to have a statute that is well written, that clearly provides the legal authority under which the agency is to operate and does not contain outdated or invalid references. And this revision meets these requirements and will allow the Office of Consumer Protection to operate as we have come to expect and do it more effectively. So the Advisory Committee looks forward to working with the Office of Consumer Protection under this revised statute. Thank you.

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- Council President Leventhal,
- Thank you. Mr. Hannan.

- 40 Stephen Hannan,
- Thank you, Mr. President. My name is Stephen Hannan. I'm the administrator of the
- Howard County Office of Consumer Affairs, the only other charter County in Maryland to
- have an Office of Consumer Affairs. In 1976 Howard County had a good sense to entice
- away from Montgomery County one of their top consumer protection investigators to
- head up its office, and a copy of the Unfair and Deceptive Trade Practices Act, which



we adopted with some modifications. The Howard County consumers are in your debt 1 and your marketplace, like ours, is recognized as one of the safest in which consumers 2 can shop. I'm here to testify in favor of the revisions proposed in Bill 3-06. Montgomery 3 County's Office of Consumer Protection has always had a national reputation for 4 excellence. Its office is staffed with trained investigators who are passionate in their 5 beliefs and serve your citizens with courtesy, competence, and compassion. But it 6 currently does not have, and this bill seeks to correct is a modern enabling statute that 7 provides it with the tools needed by a modern regulatory agency. The revisions were not 8 caused by the drafters in '71. They are because of court decisions in the Administrative 9 and Regulatory arena. The proposed Bill began with a review two years ago headed by 10 Mr. Friedman, your current Acting Director. It's been vetted by the premier think tank in 11 consumer law area, the National Consumer Law Center. Through these revisions you 12 will eliminate those areas where jurisdiction has changed, you will clarify the ability of 13 the Office to act and react to what occurs in the marketplace. In today's marketplace 14 consumers can not know all of the consumer laws and they count on offices like ours to 15 know the laws and enforce them so that they are not economically injured by violators. 16 Civil citations and administrative orders need to be a staple of consumer protection 17 agencies so they can address violations in the least intrusive manner, or in a manner 18 that will protect consumers from predatory businesses and/or industries. In conclusion, 19 we liked your first draft in 1971. We plan to take a hard look at this one, and we urge 20 your adoption of the revisions. 21

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Council President Leventhal,

Thank you, Ms. Johnson.

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Carolyn Johnson,

Good afternoon. My name is Carolyn Johnson and Candace is actually my daughter. She purchased a used car in September, 2005, and within a month she was talking about some problems, the car was rattling. So they brought it back to the dealership and they made some repairs and she took it back to school and came back home during December and said the problem still exists. At this time she was getting ready to leave the country to go to Spain so I took the car to the dealership and she had a list of problems that I gave to them. The same afternoon when I got home, one of the service reps called and said the problem with the rattling is there's a problem with the tires. This car is not safe to drive. You need four new tires. You shouldn't drive the car anymore. The next day I went back to talk to the used car manager and the service manager. And the used car manager was totally not going to talk to me about it. He just said "it passed Maryland inspection." That was the end of the conversation. The service manager said, "I guarantee the car is safe to drive." And I said just show me where it is, and I left the property driving the car. The very next day, the left front tire blew while I was driving down the street. And the first thing I thought was if she was driving back to school at 60 miles an hour down 29, what would have happened to that tire?" because I was only driving about 20 miles an hour because I had to get over to make a right turn. When she came back into the country, we came up here and filed a complaint and everyone in the office was asking questions and wanting details and taking pictures and they said,



- 1 "Well, we'll talk to the dealership" who was completely and totally unwilling to take any
- 2 responsibility for this. They just kept saying that it passed inspection. But the conflict
- was the service rep said that the car was unsafe to drive, the service manager said the
- 4 car is safe to drive. And in the end, after going back and forth and showing pictures and
- a lot of discussion, in the end, the dealer did reimburse me for four new tires because
- 6 she was not going to back to school driving that car on four bad tires. There was a
- spare tire that was in the back that they could have actually put on the front, but I guess
- they never thought about that. The bottom line is they sold her the car with these tires
- and not willing to take any responsibility for it. But -- and I told her because of the
- conversations going back and forth, that this probably would not be resolved this
- calendar year. But the Office of Consumer Protection just pressed on, threatened
- litigation, and the dealership finally said, "Okay, we'll pay for all four tires."
- 13 Council President Leventhal,
- Okay. Thanks for your testimony. We're glad that you and your daughter are okay and
- that nothing happened -- nothing put you in any further danger than what you were in.
- 16 Mr. Andrews?

17 18

- Councilmember Andrews.
- 19 Thank you, Mr. President. Ms. Johnson, thank you for your testimony. I'm sorry to hear
- that you had that experience with your dealer, and I appreciate being here and I want to
- say that over the years of serving on the Council I've heard dozen of stories of the
- 22 Consumer Office helping people like you to resolve valid complaints against different
- organizations. So I appreciate your relaying -- testifying in person and it reflects from
- what I heard from many others as well. I think we're well served by the office. Thank you.
- 25

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- 27 Council President Leventhal,
- Thank you all very much for being here. We now move to Agenda Items 14, 15, 16, 17,
- 18, 19, 20, and 21. These are all special appropriations to the FY '06 capital budget, FY
- 30 '06 operating budget, and amendments to the FY '05 through 2010 capital improvement
- program for various programs relating to maintenance of physical and technology
- infrastructure for the following agencies: Housing Opportunities Commission,
- 33 Montgomery College, County government, Montgomery County Public Schools, and the
- Maryland National Capital Park and Planning Commission. The Council is scheduled to
- take action on these special appropriations one week from today on March 14. Anyone
- who wants to submit additional material for the Council to consider should do so by the
- close of business today. We have two witnesses, Mr. Karl Moritz, representing the
- Planning Board, and Mr. Scott Minton representing the Housing Opportunities
- Commission. Mr. Moritz please, you've already pressed your button; please state your
- 40 name clearly for the record.

- 42 Karl Moritz,
- Thank you. For the record my name is Karl Moritz, Chief of the Research and
- Technology Center which serves the Montgomery County departments of the Maryland
- National Capital Park and Planning Commission and I'm pleased to be here today to



- represent our information technology infrastructure request. I want to commend you and
- the Council for the leadership that you have shown on this issue. First, this
- 3 systematically identifies infrastructure needs in last year's comprehensive report and,
- 4 second, to direct funds toward reducing the County's infrastructure backlog. MNCPPC,
- as part of the interagency technology policy coordinating Committee, has been working
- 6 with the Management and Fiscal Policy Committee to evaluate and monitor I.T.
- 7 infrastructure conditions. An initiative this fall has been to have each agency prepare
- 8 detailed project description forms for our major I.T. systems. The resulting
- 9 comprehensive review of the health of Park and Planning's I.T. system resulted in a list
- of it infrastructure needs that are included in our request. As the Council is aware,
- technology is an important component of our pledge to improve our operations. At the
- top of our priority list is funding for document imaging, which will build upon the file
- management improvements you funded our recent budget supplemental for
- development review. Our other top priority requests include investments in backup
- redundancy systems to assure -- they keep -- operations continue without interruption,
- security enhancements to keep pace with the increasingly sophisticated intrusion
- attempts and replacement of core infrastructure that is out-of-date and software
- systems that are nearing the end of their life cycle. I'd be happy to answer any
- 19 questions you have.
- 20
- 21 Council President Leventhal,
- 22 Thank you. Mr. Minton?
- 23
- 24 Scott Minton,
- 25 Good afternoon, President Leventhal, members of the Council. I'm Scott Minton,
- 26 Executive Director of the Housing Opportunities Commission. I appreciate the
- opportunity to discuss these special appropriations with you today. HOC is requesting
- appropriations for three items: sprinkler systems for several high-rises, a new telephone
- 29 system, and maintenance funds for public housing properties. County law mandates
- that all new buildings include sprinkler systems. The County code also grandfathers old
- buildings. As a responsible owner, HOC feels that it should install new sprinklers and
- 32 alarm systems in the elderly buildings. Let me emphasize that both the buildings and
- the residences are elderly. We own and manage five buildings for low income
- independent seniors. The buildings range in age from 29 years to 45 years old and
- contain a total of 720 apartments. Each property still has it's original fire protection and
- detection systems. Given the age of these systems, they are prone to failure and must
- be periodically tested and serviced to ensure proper operation. Technological advances
- in fire detection and protection systems have rendered these systems obsolete and
- replacement parts are becoming increasingly difficult if not impossible to obtain. Finding
- 40 qualified technicians to work on these older systems is also difficult. The systems still
- provide a very basic level of protection, however modern systems are more reliable and
- easier to operate and maintain. Most buildings have no sprinkler protection at all and
- others have sprinkler systems that cover a very limited area such as parking garages.
- None has a sprinkler protection in individual apartments. HOC wants to provide
- residents with the maximum degree of protection currently available and to reach this



- goal we'd like to install sprinklers in each apartment. In addition, we want to add state-1 of-the-art detection and notification for equipment such as flame, heat, smoke, carbon 2 monoxide detectors and specialized detection equipment for the handicapped. HOC's 3 telephone system is no longer sold or serviced by its manufacture, Fujitsu. Repair and 4 replacement of the system components has becoming increasingly difficult. In the event 5 of substantial damage to the system, HOC could find itself unable to keep it running. 6 The situation has required HOC to look for a system that has growth capacity and 7 replacement parts. We have done a thorough review of all existing voice over I.P. 8 systems on the market and feel that a scalable product is the best alternative. This will 9 not only serve HOC today but also in the future. We recently made modifications to our 10 core information technology network that will allow for a scalable product and when we 11 move to a new headquarters, the new system will go with us. We are also requesting 12 funds for public housing, maintenance that the federal government is no longer 13 providing. So if you'd consider the rest of my written testimony... 14
- 1516 Council President Leventhal.

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We have your written testimony and we will consider it. Mr. Andrews. Okay, thank you both. [NO AUDIO] The Council stands in recess until 7:30 tonight for the public hearing on the supplemental appropriation for the Kendale School project. The Health and Human Services Committee will convene at 3:30